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**PROPERTY AND WELFARE IN LIBERAL
POLITICAL PHILOSOPHY**

A DISSERTATION

Submitted to the Council for National and Academic Awards
in Partial Fulfilment of the Requirements for the Degree of
Doctor of Philosophy

by

Jennifer Louise Mayor

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ABSTRACT OF THE DISSERTATION

Property and Welfare in Liberal Political Philosophy

by

Jennifer Louise Mayor

In Anarchy, State, and Utopia, Robert Nozick argues that only a minimal, nightwatchman state is morally justified because a state with more extensive powers "violates persons' rights not to be forced to do certain things". He writes that his view implies that the state may not justly compel "some citizens to aid others". It is the justification of compelling "some citizens to aid others" that is the subject of this dissertation.

In arguing for his position, Nozick invokes the name and prestige of two foremost liberal philosophers, Locke and Kant. It is shown that these two philosophers to whom Nozick turns for support do not support him at all, for they, like other philosophers in the liberal tradition such as Mill and Reid, argue that the property rights of the affluent be limited to provide for the needs and welfare of those unable to do so for themselves, that the state may justly compel some citizens to aid others.

It is possible that, while Nozick is not, as he believes, a true disciple of Locke and Kant, or, indeed, in the mainstream liberal tradition on this important aspect of distributive justice, he has, nevertheless, produced a theory of property rights that can stand on its own merits, without appeal to Locke and Kant. It is argued that this is not so either, that Nozick fails to give convincing arguments for his strong property rights.

The rejection of the idea that redistribution is a legitimate sphere of state action did not originate with Nozick in the twentieth century. The idea is clearly expressed in the writings of Hume in the eighteenth century. In order to show more clearly the implausibility of the minimal state case, Hume's arguments against redistribution are investigated and shown to fail.

TABLE OF CONTENTS

	Page
Abstract	ii
Introduction	1
Footnotes	13
 CHAPTER 1 LOCKE'S THEORY OF PROPERTY	
Introduction	14
1. Natural Law and Natural Rights	15
1.1 God and Natural Law	15
1.2 The Four Natural Laws	17
1.3 Freedom and Equality	20
1.4 Natural Rights	22
2 Common Ownership and Private Appropriation	26
2.1 Common Ownership	26
2.2 The Need for Private Appropriation	28
2.3 The Problem of Private Appropriation	29
2.4 Locke's Argument for Private Appropriation	31
3 Individual Labour and Familial Property Rights	37
4 The Limits to Property Acquisition	38
4.1 The Introduction of Money into the State of Nature	48
4.2 Civil Law and Common Land	51
5 Private Property and Welfare in Civil Society	53
5.1 Regulation of Private Property and the Common Good	53
5.2 Welfare Rights	57
 CHAPTER 2 HUME'S THEORY OF PROPERTY	
Introduction: From Heaven to Earth	74
1 Men's Need for the Institution of Property	78
2 Self-Interest and Mutual Agreement	87
3 The Principles and Rules of Property	93
4 The Validity of Hume's Justification of the Principles and Rules of Property	102
4.1 Advantaged and Disadvantaged	104
4.2.1 The Size of Property Holdings	111
4.2.2 Positive <u>in rem</u> Rights to Aid	114
4.3 Hume's Anti-Redistributionist Arguments	117

	Page
CHAPTER 3 J.S. MILL'S THEORY OF PROPERTY	
Introduction	134
1 Mill's Conception of Personal Excellence	134
1.1 Autonomy or Individuality: Man as Decision Maker	134
1.2 Man as Social and Moral	139
2 Human Nature and the Good Society	143
2.1 Laissez-Faire, Social Welfare and Autonomy	144
3 The Institution of Private Property	150
3.1 Private Property in Principle and Practice	150
3.2 Private Property in Land	157
3.3 Reforms: Distribution and Redistribution of Property, Wealth and Income	160
4 The Nature and Status of Property Rights in Mill's Theory	174
 CHAPTER 4 NOZICK'S THEORY OF PROPERTY	
Introduction	186
1 Nozick's Theory of Individuals' Rights	186
1.1 The Nature of Individuals' Rights	186
1.2 Welfare Rights and the Role of Government: Locke and Nozick Compared	190
2 The Entitlement Theory or Theory of Justice in Holdings	194
2.1 The Principle of Justice in Acquisition	195
2.1.1 The Proviso and Needs	196
2.1.2 Property Rights and the Right to Life	199
2.2 The Principle of Justice in Transfer	205
2.3 The Principle of Rectification	207
3 Nozick's Taxonomy of Principles of Justice	208
4 The Principle of Self-Ownership in Traditional Liberal Theory	213
4.1 Lockean Self-Ownership: Locke and Nozick Compared	215
4.2 "Kantian" Inviolability and Self-Ownership: Kant and Nozick Compared	221
4.3 Self-Ownership and Paternalism: Richard Price and Nozick Compared	230
5 The Liberal Case for Redistribution and Positive <u>in rem</u> Rights to Aid	232

	Page
CONCLUDING REMARKS	
1. The Traditional Liberal Case for Negative Property Rights	245
2 Welfare as a Legitimate Limitation on Negative Property Rights in Traditional Liberal Philosophy	247
3 The Consistency of the Welfare Liberal Philosophical Position	248
ABBREVIATIONS USED IN THE DISSERTATION	256
BIBLIOGRAPHY	257

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"A man who is born into a world already possessed, if he cannot get subsistence from his parents on whom he has a just demand, and if society do not want his labour, has no claim of right to the smallest portion of food, and, in fact, has no business to be where he is. At Nature's mighty feast there is no vacant cover for him. She tells him to be gone, and will quickly execute her own orders".¹

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1. T. Malthus, An Essay on the Principles of Population, Second Ed., 1803, p.531. Quoted in: A. Menger, The Right to the Whole Produce of Labour, First Ed., London, 1899, p.4.

INTRODUCTION

Robert Nozick's Anarchy, State, and Utopia has stirred considerable controversy among philosophers not only because of its generally stimulating and provocative nature, but also because Nozick advocates a libertarian view of the state. He believes that only what he calls the "minimal, nightwatchman state"¹, that is, a state "limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts" is morally justified, and that "any more extensive state will violate persons' rights not to be forced to do certain things".

A "noteworthy implication" of this view, he informs us, is that "the state may not use its coercive apparatus for the purpose of getting some citizens to aid others"². It is the justification of "getting some citizens (without their consent) to aid others" that is the subject of this dissertation.

The view that aid to the needy is a duty of justice, enforceable by the state, and that the property rights of the wealthy may be curtailed to satisfy such positive rights of the needy is fundamental to modern welfare liberalism. Welfare liberals believe that the state is required to tax the wealthy to provide for the material needs of those who are unable to look after themselves. For Nozick, in contrast, need per se can never create a right to any part of the wealth (earned or unearned) of others. It may be the case that A and his family are able to live lives of luxury, eating caviar twice daily, while Z and his family have insufficient bread, but this, of itself, is not unjust. Nozick believes, contra the welfare liberals, that where A is in no way responsible for Z's plight, Z can have no claim on any part, however small, of A's wealth. The idea that there are rights to benefits, on the grounds of need, as the welfare liberals maintain, is a mistaken one. In taxing (without consent) its wealthier citizens in order to satisfy these supposed rights to benefits, the welfare state is violating the rights of the property-holders to dispose of their property as they choose.

Nozick argues that, in advocating "enforced benevolence" and positive rights to aid, welfare liberals have abandoned those moral principles and rights that were the cornerstone of traditional liberalism, especially the liberalism of the seventeenth and eighteenth centuries.

Welfare liberals, he informs us, have "shifted" away from the moral principles and rights of the "classical liberals"³. In particular, they have rejected those strong property rights that stem from the moral principle of "self-ownership". Nozick tries to resurrect what he takes to be the fundamental moral principles and rights of traditional liberalism and embody them in his own theory of distributive justice. In so doing, he invokes the name and prestige of two foremost liberal philosophers, Locke and Kant, in support of his own "minimal-statist" and anti-welfare position.

Now it appears that there are many philosophers who have doubts and reservations about the correctness of Nozick's uncompromising line, his firm stand against welfare rights and redistribution, but who remain as convinced as Nozick himself that the theory of distributive justice in Anarchy, State, and Utopia is, indeed, based upon those moral principles and rights espoused by seventeenth- and eighteenth-century liberal philosophers, especially Locke and Kant, and certain other, more recent, liberal philosophers. In other words, while Nozick believes that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, and his critics believe that the state is morally required to use its coercive powers to this end, both he and they are equally convinced that traditional liberalism, especially the liberalism of Locke and Kant, takes the Nozickian line in respect of its advocacy of strong property rights and a limited, nightwatchman, role for the state. Thus Paul writes:

Anarchy, State and Utopia cannot be divorced from the tradition of which it is so obviously a part. Nozick is the twentieth century successor to the great classical liberals of the seventeenth century - Locke, Grotius and Pufendorf.⁴

He adds that Nozick is "the recent successor to Lockean liberalism"⁵. He "revives the claim long associated with Locke and Spencer that a 'minimal state limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts and so on is morally justified' "⁶. Similarly, Williams writes that Nozick is "with Locke" in his advocacy of the minimal, nightwatchman state, that is, the "nightwatchman state of classical liberal theory"⁷, and Wolff claims that "Nozick elaborates a neo-Lockean theory of property"⁸, advocates "the classic theory of rights and border-crossings"⁹, and the "Locke-Mill theory of the public and private"¹⁰. Finally, Scanlon tells us that Nozick has a "framework of rights derived from Locke"¹¹.

It can be seen that, like Nozick himself¹², these critics and commentators make reference to the "classical liberal" tradition. It appears to be their belief (and Nozick's) that philosophers such as Locke, Pufendorf, Grotius, Kant and Mill, among many others, are "classical liberals", and, as such, consistently argue for a Nozickian-type principle of self-ownership, strong property rights, and a minimal, nightwatchman role for the state. They regard Nozick in the same way as Nozick regards himself - as one of the latest in this long tradition of "classical liberals" who have argued for a minimal-statist, anti-welfare position.

It is my primary goal in this dissertation to show, by a detailed examination of their works, that many of those philosophers who have been called "classical liberals" such as Locke, Pufendorf, Reid, Kant and Mill do not take the uncompromising, anti-redistributionist stand that Nozick takes. I shall show in particular that the two liberals, Locke and Kant, to whom Nozick turns for support, do not support him at all, for they, like Pufendorf, Reid and Mill, argue that the property rights of the affluent be limited to satisfy the needs and welfare of others, that the state may legitimately use its coercive apparatus for the purpose of getting some citizens to aid others. I shall show further that the justifications they offer for redistributing property are coherent in terms of the pre-suppositions and assumptions of their own theories.

Thus, it is my contention that it is wrong to call philosophers like Locke, Pufendorf, Reid, Kant and Mill "classical liberals" for they do not eschew all forms of state-enforced redistribution and aid as do the true "classical liberals" such as the modern libertarians and their philosophical ancestors, the nineteenth-century laissez-faire "economic individualist" school. I aim to show that many libertarian philosophers such as Nozick and Hospers, and many commentators and critics of libertarian theory, such as Paul and Williams, have seriously misinterpreted these earlier liberal philosophers whom they have called "classical liberals", and that Nozick and Hospers have added to this mistake of interpretation by invoking their names in support of their own extreme positions. (Just as Nozick invokes the names of Locke and Kant in support of his position, so Hospers¹³ turns to Mill in support of his own, even more extreme position, but, as I shall show, the

rights and liberties found in the theories of Locke, Kant and Mill are very unlike those found in libertarian and classical liberal theory.) Although the focus throughout will be upon the right to aid, this topic will be discussed in the wider context of the property rights and principles that each philosopher considers ideally just. By this means, the contrast between the true classical liberals or libertarians and those who have been wrongly categorised as classical liberals will be more sharply delineated.

Nozick claims that contemporary welfare liberals have "shifted" away from the moral principles and rights that were fundamental to the theories of Locke and Kant. My aim is to show that the rights and principles of modern welfare liberalism are quite consistent with those that Locke, Kant (and other liberals) articulated, that the welfare state is founded upon a principle of distributive justice that these earlier liberals also acknowledged, namely that the right to have one's basic needs satisfied is a more fundamental right than that to dispose of all one's property as one chooses. Rather, the "shift" has been made by Nozick himself - a shift towards a principle of self-ownership so strong and a right of property so absolute that it becomes appropriate to ask whether the property rights of individuals may ever be compromised (Nozick says "violated") even to avert "catastrophic moral horror"¹⁴. As I shall show, the question would not be at all appropriate in the context of the theories of property of Locke, Pufendorf, Reid, Kant and Mill, and Locke, the philosopher from whom Nozick's own rights are supposed to be derived, would have regarded the question itself with "moral horror".

Now it is, of course, possible that while Nozick is incorrect in his belief that he is a true disciple of Locke and Kant, or, indeed, in the mainstream liberal tradition on this important aspect of distributive justice, that he has, nevertheless, produced a theory of property rights that can stand on its own merits, without appeal to these other philosophers. In other words, it might be the case that Nozick's mistake is merely one of interpretation, rather than justification, and that, by substituting the terms "Nozickian moral principles" for "Kantian moral principles" and "Nozickian rights" for "Lockean rights", he might be able to show convincingly that redistribution for welfare is not a concern of distributive justice and that the minimal state is, indeed,

"inspiring as well as right"¹⁵.

My second goal in this dissertation is to show that this is not so either and that he does not succeed in making a good case for his minimal state and Nozickian property rights. In order to do this, I shall examine the grounds or justificatory basis of rights as he outlines them in both Anarchy, State and Utopia and in his recent work, Philosophical Explanations. I shall argue, in particular, that if property is required for a value-seeking life, and property rights are justified on account of this, then the case for some redistribution by the more-than-minimal state is very strong. If what is of ultimate value is a value-seeking life, and property is necessary for such a life, then it seems that all persons should have at least that minimum amount of property required for such a life, and that some redistribution will be necessary. In other words, it is reasonable to claim that whatever basis or fundamental value serves to justify or give point to a right to property should also serve to justify a right to welfare. This, I shall show, is the position taken by other liberals such as Locke, Kant, Reid and Mill in respect of their own justifications of rights to aid.

The rejection of the idea that redistribution for aid is a legitimate sphere of state action did not originate with those like Nozick, Hospers and Rothbard in the twentieth century or even with the laissez-faire liberal economic tradition in the mid-nineteenth century. The idea may clearly be seen in the writings of Hume in the eighteenth century. In order to show more clearly the implausibility of the minimal-statist, anti-welfare position, which is the second goal of this dissertation, I also investigate Hume's defence of his strong property rights and his arguments against redistribution, and show that the case he presents is no more convincing than Nozick's.

Now, although Hume leans towards the conservative tradition, laying great emphasis on custom, tradition, and the security of society, he is, nevertheless, important from the viewpoint of this study in that he employs an argument in defence of his strong property rights and anti-welfare position which becomes familiar with later nineteenth-century laissez-faire liberals and twentieth-century libertarians. He claims that his system of property rights operates to the material advantage

of every member of society. Now his system of property rights makes possible the flourishing of what is often called the "laissez-faire" market economy - a market economy untouched by government or free of government "interference". The implication of his view is that no redistribution, no welfare payments, and no modification of the free market is necessary because all individuals, including the poorest and the weakest, benefit from the operation of the "untouched" market economy.

This particular defence of strong property rights and the minimal, nightwatchman state clearly articulated by Hume in the eighteenth century is still vigorously maintained to this day and, thus, has more than historic interest. Hospers, for example, argues that "Everywhere the free market has been permitted to flourish, prosperity for the masses of the people has followed"¹⁶ and "economic abundance can be assured only by the free market ... to the extent the free market is tampered with, the abundance people take for granted is jeopardised"¹⁷. Similarly, to Berlin's challenge that the "unrestrained" free market works to the advantage of "the strong, the brutal and the unscrupulous against the humane and the weak ... freedom for the wolves has meant death to the sheep"¹⁸, Rothbard claims that "unrestrained economic individualism leads, on the contrary, to peaceful and harmonious exchange which benefits most precisely the 'weak' and the 'sheep'; it is the latter who could not survive in the statist rule of the jungle, who reap the largest share of the benefits from the freely competitive economy"¹⁹. Hume has thus initiated what appears to be a powerful and important defence of such strong property rights, and the minimal, nightwatchman state. I shall show that such a system of property rights as Hume and others like Nozick, Hospers and Rothbard advocate, which make possible this "unrestrained economic individualism" is not to the advantage of all for the benefits do not necessarily "filter down" in such a way that the material needs of every person are satisfied. Thus, some redistribution by the more-than-minimal state is necessary.

In addition to claiming advantages for his particular type of "market" property rights, Hume also employs two arguments against redistribution of property. These are: the argument from liberty (a typically liberal argument) and the argument from the security of society (a

typically conservative argument). Clearly, if it were the case that individuals' liberty would be infringed and their lives subject to coercive interference by government officials or the security of society threatened, by any state-enforced scheme of redistribution, these would constitute powerful reasons against the practice. The liberty argument is used by Hume specifically against redistribution for "perfect equality" rather than against the more moderate schemes of redistribution for aid. But from his silence on the subject of state-enforced welfare, it seems that he might have believed that his argument was valid for redistribution at any level. I aim to show that this argument has little plausibility when applied to more moderate schemes of redistribution for welfare. His argument from the security of society seems to be intended to apply to all forms of redistribution, including that for welfare. I aim to show, against Hume, that the security of society actually requires some moderate redistribution. In the course of my arguments against Hume, I refer to points made by his liberal friend and contemporary, Francis Hutcheson. The inclusion of Hume's theory of property in this thesis broadens the discussion beyond the frontiers of liberalism, but in showing that his conservative and liberal arguments fail, I aim to demonstrate more clearly the implausibility of the minimal-statist, anti-welfare case.

It is not my aim in this study to discuss all the philosophers to whom I have referred in this introduction with the same degree of detail. I have devoted a full chapter each to the two anti-welfare philosophers, Hume and Nozick. Nozick is especially important because his view of redistribution for aid is in marked contrast to that of his supposed philosophical predecessors, Locke and Kant, and because his is the most cogent and sustained attack on the welfare position to be produced in recent years. Hume is important in that his strong property rights and anti-welfare position may be sharply contrasted with the more moderate positions of certain other eighteenth-century philosophers such as Reid, and also because some of the arguments that form part of his lucid defence of his own position have survived to this day.

Of the pro-welfare philosophers to whom I have referred, I have sought to discuss and analyse more fully those whose theories of property are better known, or more controversial, or, in my opinion, more seriously misinterpreted. I have devoted a full chapter each to Locke and Mill

on the grounds of both misinterpretation and significance in liberal theory. Reid, Pufendorf and certain other philosophers such as Price are discussed mainly by way of contrast on specific points on the grounds that their theories of property are rarely, if ever, discussed in the philosophical literature. Kant is accorded intermediate treatment - he is given a full section in the chapter on Nozick. Even though his theory of property and welfare is little known and discussed, he makes his case for welfare so plain that the contrast with Nozick who invokes his name and support is all the more striking.

Locke, Hume, Mill and Nozick are, therefore, discussed in individual chapters. It can be seen that I have devoted one complete chapter to a philosopher from each of the seventeenth, eighteenth, nineteenth and twentieth centuries, and that two of these, Locke and Mill, are pro-welfare, and two, Hume and Nozick, are anti-welfare. The chapters are arranged in a historical order, reflecting the historical character of the dissertation.

* * *

It can be seen that the question of rights is central to this study. Mention has already been made of the right to benefit or aid, and we have seen that Wolff, in criticizing Nozick's position, makes reference to the "classic theory of rights". It is appropriate at this stage to say something about the "classic theory of rights" (or the "negative theory of rights" as it is also sometimes called) and to demonstrate the way in which this theory of rights differs from what may be called the "welfare theory of rights". In so doing, I shall be able to introduce the classification of rights which I use throughout the following chapters. The classification I have adopted is that outlined by Joel Feinberg in Social Justice²⁰ as it is very comprehensive and permits a high-lighting of the key difference between the classical liberals and libertarians on the one hand and their welfare opponents on the other in respect of aid and redistribution.

Feinberg distinguishes between in personam and in rem rights, between positive and negative rights, and between active and passive negative rights. In personam rights are rights held against particular, nameable individuals. Their distinguishing characteristic is that they enable the right-holder to demand that these particular and certain

individuals perform specific duties. In contrast, in the case of in rem rights, there are no determinate or nameable individuals. Such rights are assertable against the "whole world", that is, against all persons who are in a position to infringe or violate them. They enable the rightholder to demand that such persons perform specific duties.

These specific duties may be either positive or negative. Positive rights (both in personam and in rem) are rights to positive performances (positive duties) on the part of others while negative rights (both in personam and in rem) are rights to others' omissions or forebearances (negative duties). Thus, for every positive right I have, someone else has a duty to do something; while for every negative right I have, someone else has a duty to refrain from doing something. Negative rights may be either active or passive. Active negative rights enable the rightholder to do something (should he choose to do so) and passive negative rights enable the right-holder not to be treated or done to in certain ways. All these rights, therefore, impose duties on the part of others. The rights of Feinberg's classification are distinguished according to the nature of the duties they impose upon others, or according to the person or persons upon whom they impose duties.

The right to welfare or aid that we mentioned earlier in the introduction is a positive in rem right. It is positive in that the specific duty with which it correlates is one that requires a positive performance on the part of these others against whom it is held (such as taxpaying) rather than a mere act of omission or forbearance. It is this category of rights which is most significant from the viewpoint of this dissertation, and which, as Nozick points out, requires the regulatory or more-than-minimal state to be satisfied. Moreover, it is this category of rights which is absent from genuine classical liberal and libertarian theory. If philosophers such as Locke, Pufendorf, Reid, Kant and Mill are, indeed, classical liberals who argue for the "classic theory of rights" we should not expect to find such positive in rem rights in their theories of property and distributive justice.

Positive in personam rights are held not against a group of persons, or "the whole world", but against specific, nameable individuals and

they are rights to positive actions from these individuals. If A owes B \$1, he has a duty to B to repay that amount, and B can insist that A discharge his duty, and can justly complain if A fails to do so. B's right holds against one assignable person, A. The distinguishing characteristic of positive in personam rights is that they are correlated with positive duties of determinate individuals. Contracts and agreements are covered by this category of rights. The category also includes the rights of the wrongfully injured to damages from their injurers.

Such positive in personam rights are, of course, important in the theories of all those philosophers to whom we have referred in the introduction for making contracts and agreements is an important feature of a free society. While for "pro-welfare" philosophers there are two kinds of positive rights in an acceptable theory of distributive justice - in personam and in rem rights - for "anti-welfare" philosophers, in contrast, there can be only one type of positive right - the positive in personam right. Indeed, this kind of right is of great significance to libertarians and classical liberals for it is a "backbone" right of the market society.

Negative rights are rights against others not to be interfered with; they are rights to other persons' omissions and forbearances. Thus, the homeowner's right to the peaceful occupancy of his home, a landowner's right to the exclusive enjoyment of his land and an individual's right to the possession and use of the money in his pocket all correlate with duties of non-interference on the part of others. Most negative rights are in rem rights in that they hold against "the whole world"; they correlate with duties of non-interference on the part of every other person, rather than specific, nameable individuals.

These negative rights may be subdivided into active and passive rights; active rights are rights to act as one chooses provided in so doing one does not infringe the rights of others; passive rights are rights not to be done to in certain ways. The key passive rights are the rights to be let alone, to have one's privacy, to be left to enjoy one's property, to have one's reputation undamaged and to have one's body unharmed. Collectively these rights are often referred to as the "right to security". Among one's active rights are those to speak openly about the things one believes in, to move from place to

place without the permission of others, to associate with whom one chooses, to use one's property for one's own benefit and to dispose of it as one pleases. Collectively these rights are often referred to as the "right to liberty".

It is these (active and passive) negative in rem rights that are foremost in peoples' minds when they think of the "liberal rights and liberties", and this is correct for both pro-welfare and anti-welfare philosophers recognise these rights. Indeed a list of active and passive rights similar to those given in the last paragraph is outlined by the pro-welfare, Thomas Reid²¹. There is, however, an important difference between classical liberals and their modern counterparts, the libertarians, on the one hand, and their welfare opponents on the other in respect of the active and passive component rights that make up the "right to property". For welfare liberals, the right to enjoy, use and dispose of one's property is limited by the positive in rem right to aid. There can be a right to enjoy, to use to one's benefit, and to dispose of, only that part of one's property that remains after taxation, or after the positive in rem right to welfare has been satisfied by other means such as by giving in to some authority a part of the food one has grown or the goods one has produced. In contrast, in the "classic theory of rights" espoused by classical liberals and libertarians, no such limit is placed on the right to property. The owner has full choice in respect of all his property. Thus, he has the passive negative right to be left in the peaceful enjoyment of all his property, and the active negative right to use it all to his benefit, and to dispose of it all as he chooses. This classic property right is often described as the absolute right to property in order to contrast it with the redistributionist's limited right to property. Although for classical liberals a property right is absolute in this sense, there is another sense in which it is not absolute. The property owner cannot use his property in a way that infringes the negative rights of others. Thus, A cannot allow poisonous fumes to escape from his factory which are damaging to the health of other people in the area. The classic property right is thus the full or absolute power and discretion over one's own property, but within the limits of other persons' negative rights. The welfare liberal property right is the power and discretion over one's property but within the limits of others'

negative and positive in rem rights. I shall show, in the following chapters, that Locke, Pufendorf, Reid, Kant and Mill argue for the welfare liberals' property right and not the classical liberals' property right as is generally believed.

This completes our classification and summary of the various kinds of rights that will be used throughout this study. We are now ready to turn our attention to the first of our philosophers, John Locke.

FOOTNOTES: INTRODUCTION

1. Nozick, Robert ASU p.ix and pp.26-27.
2. Ibid. p.ix.
3. Ibid. p.172.
4. Paul, Jeffrey Reading Nozick. J. Paul's Introduction, p.4.
5. Ibid. p.4.
6. Ibid. p.1.
7. Williams, Bernard "The Minimal State" in Paul, Jeffrey Reading Nozick, p.29.
8. Wolff, Robert Paul "Robert Nozick's Derivation of the Minimal State" in Paul, Jeffrey Reading Nozick, p.79.
9. Ibid. p.86.
10. Ibid. p.85.
11. Scanlon, Thomas "Nozick on Rights, Liberty and Property" in Paul, Jeffrey Reading Nozick, p.108.
12. Nozick, Robert ASU, p.172.
13. Hospers, John Libertarianism, pp.20-21. Hospers writes that as regards "the scope of law" i.e. "what laws should be about and why", the "libertarian agrees with the principles set down by J.S. Mill" in his On Liberty.
14. Nozick, Robert ASU p.30 footnote.
15. Ibid. p.ix.
16. Hospers, John Libertarianism, p.131.
17. Ibid. pp.135-6.
18. Berlin, Isaiah, "Introduction", Four Essays on Liberty, p.xiv. Berlin attacks economic individualism forcefully.
"The fate of personal liberty during the reign of unfettered economic individualism - about the condition of the injured majority, principally in the towns, whose children were destroyed in mines or mills, while their parents lived in poverty, disease, and ignorance, a situation in which the enjoyment by the poor and the weak of legal rights ... became an odious mockery ... The bloodstained story of economic individualism and unrestrained capitalist competition does not to-day need stressing." p.xiv-xvi.
19. Rothbard, Murray N. The Ethics of Liberty, p.217.
20. Feinberg, Joel Social Justice, Ch.4, pp.59-60.
21. Reid, Thomas, Essays on the Active Powers of the Human Mind, pp.415-416.

CHAPTER ONE
LOCKE'S THEORY OF PROPERTY

Introduction

In an article called "The Right to Life", Hugo Bedau writes "It would be fascinating to study in detail the steady emergence of the conviction (and the supporting legislation) that society and its governmental agencies have the duty to provide the minimal necessities of life as a matter of the individual's right". But "One thing is certain", he adds, "Natural rights theorists such as Locke contributed nothing to the growth of this view"¹. Bedau, thus, makes the claim that Locke acknowledges only a purely negative right to life. As a classical liberal who espouses the classic theory of rights, he sees the right to life as a negative in rem right - a right not to be killed, injured or interfered with by others, but not as a positive in rem right to be supplied, by the more fortunate members of society, with the goods one needs to stay alive.

In similar vein, Rodney Peffer writes that although "Locke and other classical liberals were the first to stress the existence and sanctity of natural rights of human beings ... they construed them as permissions to act in certain ways and correlative obligations of others not to interfere. The underlying ideas were that persons ought to be free 'to order their actions and dispose of their possessions as they see fit' and that 'all men must be restrained from invading one another's rights'"². But "they refused to recognise rights to certain types of goods" or rights to be in a certain kind of "economic position". Peffer maintains, in other words, that Locke, like other classical liberals refused to recognise "welfare rights"³ or positive in rem rights to aid.

In this chapter, we shall see that these two commentators (together with many others) are incorrect in their claim that Locke recognises only negative in rem rights to life and property (the typically classical rights of non-interference) and no positive in rem rights to aid. Locke's account of the rights to life and property will be examined in detail, and it will be shown, in particular, that his justification of redistribution for aid is coherent in terms of the

assumptions or pre-suppositions of his theory, and that the rights to welfare and property have a common ground or foundation. It will also be shown, contra C.B. Macpherson, that Locke's property rights and principles of distributive justice do not provide the rationale for the laissez-faire market economy and the unlimited accumulation of wealth associated with "possessive individualism". Thus Locke is not to be seen as a founding father of laissez-faire theory, classical liberal entrepreneurship and the minimal, nightwatchman state.

1. Natural Law and Natural Rights

Locke's theory, like other natural rights theories before his, is grounded in theology. According to Locke's theory, God has made the World and laid down certain laws to which men are subject. This Natural Law is "a declaration of God's will and a standard of right and wrong"⁴. It not only specifies men's rights, but also their duties and obligations; it not only sets out what others may not do to him, but it also sets out what he must do to, and for, others. I shall begin this chapter on Locke's theory of property with a short account of his ideas of Natural Law and Natural Rights. This is necessary because these two parts of his theory are intimately linked so that an understanding of his theory of property requires some understanding of his theory of Natural Law and Natural Rights. Locke clearly specifies the centrality which God plays in granting (and limiting) property rights; for God, says Locke, "hath given the World to mankind in common"⁵, and it is only because of this gift that men are able to obtain individual property.

1.1 God and Natural Law

In the Essays on the Law of Nature, Locke argues that the order and regularity found in the World points to the existence of a maker or creator of this order and regularity⁶. He next argues that God, this maker, must have made the World for some end or purpose:

... Since on the evidence of the senses it must be concluded that there is some maker of all these things, whom it is necessary to recognise as not only powerful but also wise, it follows from this that he has not created this world for nothing and without purpose. For it is contrary to such great wisdom to work with no fixed aim. (ELN 157, 5-10)

As man is part of the world it would follow that God must have made him for some purpose for again "it is contrary to such great wisdom to work with no fixed aim"⁷. It could not be possible that God who "has himself created the soul and constructed the body with wonderful art, and has thoroughly explored the faculties and powers of each (ELN 155, 3-6) should have done so for no good reason. Locke suggests that God must have made "certain definite principles of action" which, if accomplished, fulfil his purposes for man. He could not have intended man to live a life of indolence because he has made him with "an agile, capable mind", and with "a body besides which is quick and easy to be moved hither and thither by virtue of the soul's authority"⁸. Such "equipment for action" could not have been given to man so that he should remain "splendidly idle and sluggish"⁹. Thus, Locke concludes, "God intends man to do something"¹⁰.

Locke thus attempts to prove that (1) there is a "lawmaker to whom we are necessarily subject" and (2) that he has made a law "with respect to things to be done by us"¹¹. This Natural Law which is a set of moral propositions, a standard of right and wrong, may be known to us by both reason and revelation. "Reason and revelation are alternative or conjunctive paths to the Law of Nature"¹². "Anyone can understand it (i.e. the Law of Nature) who is willing to apply diligent study and direct his mind to the knowledge of it"¹³.

Given, then, that man is dependent on God in the sense that he has been made by, and thus owes his existence to God, why is it the case that man is morally obliged to fulfil the ends for which his Creator designed him? How does moral obligation arise from this fact of creation and dependency? Locke argues:

And this obligation seems to derive partly from the divine wisdom of the Lawmaker, and partly from the right which the Creator has over his creation. For, ultimately, all obligation leads back to God, and we are bound to show ourselves obedient to the authority of his will both because our being and our work depend on his will, since we have received these from him, and so we are bound to observe the limits he prescribes. (ELN 183, 15-21).

Locke argues that God, as man's creator, has a "Creator's right" in man which gives him the right to use man for the ends for which he designed him¹⁴. When man acts according to God's purposes, that is, according to Natural Law, he is acknowledging the fact that God has such "rights of creation". Man's obligation, Locke says, arises from "the authority

and dominion which someone has over another ... by natural right and the right of creation (jure naturae et creationis), as when all things are justly subject to that by which they have first been made, and are also constantly preserved"¹⁵. If men know that there is a God who is their Creator, they cannot, Locke believes, deny that he "has right and authority over themselves; for who will deny that the clay is subject to the potter's will, and that a piece of pottery can be shattered by the hand by which it has been formed"¹⁶. When God imposes obligations or Natural Laws on man, he is merely exercising his "rights of Creation". The idea that the fact of creation gives the creator rights over that which he has created was not uncommon in Locke's time. Baxter makes a similar point:

God's kingdom is not constituted primarily by contract, but by His right resulting immediately from His being our Creator, and so our owner; our obligation is founded on our being His creatures, and so His own. The most absolute slave imaginable, cannot be so much obliged to you antecedently to his consent, as man is unto his Creator, from whom he is, and hath all that he has. (HC3.28)¹⁷

1.2 The Four Natural Laws

According to Locke, a law is "that which prescribes to everything the form and manner and measure of working"¹⁸. In his account, law is not a negative concept in the sense that it merely prohibits a certain range of activities; for Locke, law is a positive concept in that it prescribes or enjoins certain actions: it directs the agent in such a way that his good and best interests are attained:

For law, in its true Notion, is not so much the Limitation as the direction of a free and intelligent Agent to his proper Interest and prescribes no further than is for the general Good of those under that Law. Could they be happier without it, the Law, as a useless thing, would of itself vanish; and that ill deserves the name of confinement which hedges us in only from Bogs and Precipices. So that, however it may be mistaken, the end of law is not to abolish or restrain, but to preserve and enlarge Freedom. (TT 2:57, 10-18)

What actions or activities does the Law of Nature prescribe?

(i) That Man should live the life which suits his nature:

Locke, as we have seen, argues that God never works without a purpose. He has made the world for a purpose and he has similarly made man for a purpose. He has given man "equipment for action", in particular,

he has furnished him with an "agile, capable mind" - the power to reason - that he may be a self-directing agent, and the author of his own actions. "A manner of acting is prescribed to him which is suitable to his nature"¹⁹, Locke says. The form of activity which suits man's nature is rational activity in accordance with natural law. "The proper function of man is acting in accordance with reason"²⁰. Man has a duty to live according to reason and natural law, for this is the proper function of man - proper in the sense that is the purpose that God has in mind for him, and proper also in the sense that his proper or best interest can be served only by living in this way.

(ii) That Mankind should be preserved:

This second law of nature is called by Locke "the fundamental law of Nature". He says "the fundamental law of nature being the preservation of mankind"²¹ or "the fundamental law of nature, man being to be preserved"²². By this concept of "preservation" Locke seems to mean what we would call "conservation" or the continued existence of mankind in the world. It is God's intention, Locke says, "that man should abide for some time upon the face of the Earth", and it is not his intention that mankind "should perish again" after only "a few moments continuance"²³. (TT 1:86, 4-9). In the Second Treatise, Locke expresses this fundamental law of preserving mankind in two different ways: The natural law enjoins that each man (1) must preserve himself and (2) must preserve the rest of mankind (where this action is not detrimental to his own preservation)²⁴.

In the Second Treatise, Locke does not discuss natural law in great detail, yet the key ideas found in the ELN, of man's dependency on God, of the Creator's rights, and man's obligation to fulfil God's purposes are clearly stated in the reasons he gives for this natural obligation to preserve oneself and others. The following statement shows that he did not abandon these earlier ideas when he came to write the Two Treatises even though he does not discuss them in detail.

For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker; All the Servants of one Sovereign Master, sent into the World by his order and about his business, they are his Property, whose workmanship they are, made to last during his, nor another's Pleasure ... Every one as he is bound to preserve himself... so by the like reason when his own preservation comes not into competition, ought he, as much as he can to preserve the rest of Mankind. (TT 2:6, 10-22).

The fundamental law of nature to preserve mankind may be otherwise expressed as the obligation to preserve mankind in the person of one-self and in the person of others. Locke sees self-preservation as an objective natural law; it is not merely a subjective desire on the part of the agent to preserve his own life (although, of course, an agent may have such a desire in addition)²⁵. Self-preservation expressed as mere psychological propensity would lead to a Hobbesian theory as Locke points out: "An Hobbist, with his principle of self-preservation, whereof he himself is to be the judge, will not easily admit a great many plain duties of morality". Clearly, if self-preservation were mere subjective desire and not a natural law obligation as well, it would follow that those who happened to lack the desire to preserve themselves would be at liberty to commit suicide. Locke, of course, denies that a man has a right to take his life. His life belongs to God²⁶ and he has no moral power to throw it away whatever desires he happens to have.

(iii) That Society should be preserved:

The third natural law is that society ought to be preserved.²⁷ Locke holds that part of God's purpose in making man was to "put him under strong obligations of necessity, convenience, and inclination to drive him into society, as well as to fit him with understanding and language to continue and enjoy it"²⁸ In the manuscript, Locke says:

If he finds that God has made him and all other men in a state wherein they cannot subsist without Society, and has given them judgment to discern what is capable of preserving and maintaining that society, can he but conclude that he is obliged and that God requires him to follow those rules which conduce to the preserving of Society. (MS f.3, fols,201-2)

According to Locke, man is not only dependent on God, he is also dependent on other men. His very existence depends on the society of other men. Clearly, if men have a natural law obligation to preserve mankind, then they must also have a natural law obligation to preserve society, since mankind can have no existence but in society. In Locke's analysis, men are not seen as a collection of atomic units²⁹ who pose and impose contrary and frequently conflicting egoistic demands upon each other and the world. This is the kind of view one finds in Hobbes and (as we shall see in the next chapter) in Hume too. Rather, Locke assumes a conception more in keeping with the organicist tradition - a conception more approximate to the principles of traditional Christian thought. According to this organicist tradition,

men are not seen as a collection of conflicting and disorganised individuals but rather as an integrated or composite whole whose elements are inseparably connected with each other and their social context in a fundamental way. Locke considers only fully socialised and inter-dependent men³⁰, not isolated, atomic units. Without natural law there can be no society, and without society the individual is not a man but a "noxious beast"³¹.

(iv) That man should worship God:

The fourth natural law concerns men's obligation to worship God³². I shall not discuss this law as it has no particular relevance to Locke's theory of property.

1.3 Freedom and Equality

We have seen that according to Locke's theory men do not make themselves, they do not own themselves, and they are the workmanship of God. They are his servants, sent into the world on his business and they are even his property. "From this common sense starting point, Lazlett says, Locke" proceeds to two inferences, that we are all free and we are all equal"³³. Such inferences could not, of course, be drawn if it could be shown that God had given any man, or order of men, superiority over other men - if, for example, the hierarchical relationship of God to man could have an analogous use between some men and other men on Earth thus justifying positions of social superiority and inferiority. One theorist, Robert Filmer, had attempted to show that such inequality and differences in men's freedom was God's intention. He had claimed that "there was to be found in Revelation a proof that God had set some men above other men, fathers above sons, and men above women, the older above the younger and kings above all others"³⁴. His theory had attempted to justify a right to absolute authority for any father or prince, and this, of course, meant that the concept of a free human being subject to no authority but his own will was absolutely impossible. Locke summarises Filmer's position thus:

Rights of Fatherhood in our A---'s sense is a Divine unalterable Right of Sovereignty whereby a Father or Prince hath an Absolute, Arbitrary, Unlimited and Unlimitable Power over the Lives, Liberties and Estates of his Children and Subjects; so that he may take or alienate their Estates, sell, castrate, or use their Persons as he pleases,

they being all his Slaves, and he Lord or Proprietor of every Thing, and his unbounded Will their Law (TT 1:9, 6-12)

Filmer, following Grotius, had argued, in particular, that it was pro-creation, one individual creating another individual by begetting him that gave a right of superiority, subjection of one will to another and even ownership³⁵. According to this theory, Locke says, "Every man that is born is so far from being free that by his very Birth he becomes a subject of him who begets him". (TT 1:50, 13-14) "Fathers have a power over the Lives of their children because they gave them Life and Being"³⁶. Now, clearly, if it is the case that the father puts "life and being into the child", it is the father who is the creator of that child and not God. It is then the father, not God, who has the "makers rights", the jure creationis, and, if this is the case, it would demolish Locke's argument for man's dependency on God. Moreover, if this dependency relation of man on God is demolished the very foundations of Locke's theory of Natural Law and hence his political theory would fall to the ground. It was thus necessary for Locke to refute Filmer's traductionist theory³⁷ that the life or being of the child comes from the father and argue for a creationist theory according to which the soul or being of the child comes from God alone.

They who say the Father gave Life to his children, are so dazzled with the thought of monarchy, that they do not, as they ought, remember that God who is the Author and Giver of Life: 'Tis in him alone we live, move and have our Being. (TT 1:52, 10-14)

It is not necessary to look in detail at the arguments Locke employs to refute Filmer's traductionist theory and to establish his own case that all men are the workmanship of God and hence equal to one another. But, briefly, Locke argues that a creator must really know what life and soul are, but such knowledge is not available to men. "How can he (i.e. man) be thought to give life to another, that knows not wherein his own life consists?"³⁸ Parents cannot therefore be the knowing or real makers of their children for they remain ignorant of what that soul really is. Parents "are but the occasions of (their children's) being"³⁹ and God "alone can breathe in the Breath of Life"⁴⁰. Locke concludes: This is

Sufficient to convince us of an Almighty Contriver, and he has so visible a claim to us as his Workmanship, that this Fatherhood is such an one as utterly excludes all pretence of Title in Earthly Parents; for he is King because he is indeed Maker of us all, which no parents can pretend to be of their children (TT 1:53, 17-26)

In this way Locke argues his case that all men are the workmanship of God, and not of other men. They all stand in the same relationship to their creator and are thus all equal and free. Men do not make other men so there are no natural superiors on Earth. "The Lord and Master of them all" has not "by any manifest Declaration of his Will set one above another" (TT 2:4). All men have the same faculties, the same natural advantages; "power and jurisdiction is and must be reciprocal among them"; there must be no "subordination" or "subjection"⁴¹. Only a maker has special rights and no man is a maker. No man has made another man nor the external objects in the world.

Man made not himself nor any other man. Man made not the world which he found made at his birth. Therefore, no man at his birth can have no right to anything in the world more than any other. (MSc28fols. 139-40)⁴²

1.4 Natural Rights

The State of Nature is a "state of perfect Freedom"⁴³ and it is a "State also of Equality"⁴⁴ in that no man is the natural master of any other man. However, it is "not a state of Licence"⁴⁵ for men may not live just as they please; they must live according to the Law of Nature. They must live "within the bounds of the Law of Nature"⁴⁶. The Law of Nature, as we have seen, enjoins the preservation of mankind. In order to preserve himself a man will need, among other things, food, raiment and shelter. In short, he will need to have possessions. Further, if he is to live according to the Natural Law he will have to be a free agent. Clearly, a man could not preserve himself if other men could come and attack him and remove his possessions. Thus the Natural Law enjoins men not to harm one another.

The Law of Nature teaches all mankind who will but consult it that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions. (TT 2:6)⁴⁷

The Law of Nature, in addition to imposing obligations on men also grants them rights. Locke mentions the "right to preserve mankind"⁴⁸, "the right to self-preservation"⁴⁹, the "right to the means of preserving" (one's life)⁵⁰, and the "right of one's freedom". Every man thus has the natural right to preservation (life), the natural right to the means of preservation (property), and the natural right to freedom⁵¹.

The Law of Nature imposes obligations of forbearance or obligations to abstain from harming in respect to just those goods to which men are said to have rights. Lamprecht states that the rights mentioned by Locke "may be summed up as the right to life, liberty and property"⁵² and it is these goods regarding which there are obligations of non-interference imposed by Natural Law. Raphael also⁵³ draws attention to the duties of forbearance or non-interference which Natural rights impose upon others:

Locke is not altogether consistent in his usage, but on the whole he follows the tradition. The obligations of Natural Law include obligations to other men, and therefore, natural rights are, by and large, rights of recipience against other men. My natural right to life is a right against other men that they should not deprive me of my life; it corresponds to their natural obligation not to kill me. My natural right to liberty is a natural right against other men that they should leave me in peace; it corresponds to their obligation to leave me in peace.⁵⁴

Raphael adds that the right to estate or property is a combination of a right of action (a freedom from obligation not to appropriate what is available for common use, that is, a right to consume), and a right of recipience (to the non-interference of others in the use of what one has appropriated). According to Raphael, "has a natural right" means, for Locke, that "others are obligated under the Law of Nature not to interfere"⁵⁵.

According to most interpretations of Locke's theory of rights (such as those of Raphael, Lamprecht, Bedau, and Peffer) every right is met with a corresponding duty on the part of someone else. This analysis is correct as far as it goes. But it is not the whole story for it seems to be the case that some of Locke's rights additionally impose duties upon the rightholder too. The natural rights to preserve oneself and to preserve mankind (which spring directly from the fundamental Law of Nature to preserve mankind) are not discretionary rights; that is, their exercise is not at the rightholder's discretion, but is simply the exercise of the natural duty to preserve mankind.

It is clear, then, that while all rights, for Locke, correlate with duties of others, two types must be distinguished. The first type we may call "discretionary" or "optional claim rights"⁵⁶. This type covers most of the familiar Lockean freedoms, those rights whose exercise is protected by duties of non-interference on the part of

others, but those exercise is optional for the rightholder. While I need not exchange my plums for nuts or employ a servant, for example, should I decide to do so, others are bound to permit me to exercise my rights to do so. In general, I am entitled to determine the course my life will take, within the bounds of Natural Law, without interference from others. Locke's second type of rights, in contrast, are non-optional. They are rights which are held as a direct consequence of duties which the rightholder has. Thus, if I have a duty to do X, I must also have a right to do X, and this in turn correlates with others' duties to allow me to do my duty. This kind of right is, therefore, a consequence of my possessing a duty; if I have a moral duty to do X, I must be left free by others to perform it. This kind of right Feinberg calls "mandatory" in order to distinguish it from the "discretionary" kind. A "deontic" right would be another name. The natural rights Locke specifies at TT2:2 (the right of self-preservation and the right of preserving mankind) are simply rights to do what we are said to be bound to do at TT2:5. Similarly, at TT2:58, in his discussion of parents' rights over their children, he writes: "The power (rights), then, that parents have over their children arises from that duty which is incumbent upon them, to take care of their offspring" and he adds that parental rights might just as well be called duties (TT2:67 and 69). All parents have a mandatory right or duty to "preserve what they have begotten"; this right to preserve one's children itself stems from the fundamental Law of Nature to preserve mankind.

The rights to preserve oneself and to preserve mankind are mandatory, not discretionary, for Locke, of course, because all lives belong to God. An individual has a mandatory right to preserve his life and take the requisite means to preserve his life even if he is desperately unhappy and would prefer to end it⁵⁷. He has a right and duty to preserve his life and the lives of others) because human lives belong to God, and a man has no right to throw away what belongs to another.

For no Man or Society of Men, having a Power to deliver up their preservation or consequently the means to it ... They will always have a Right to preserve what they have not a Power to part with. (TT 2:149, 18-25)

They have no moral power (right) to part with their lives. They have a mandatory right or duty to preserve what they have no moral power to part with. It would have made as much sense if Locke had said that

they have a (mandatory) right to preserve what they have a duty to preserve. According to his theory, as we have seen, all men are the workmanship of God, and every man exists at God's pleasure, and not at the pleasure of other men. A man can no more throw away his own life than he can throw away another's life. He has a mandatory right and duty to preserve both. Moreover, he has a mandatory right and duty to take the requisite means to preserve human life. Thus, it is not simply that an individual must not kill himself (or others) by act of commission; he must not do so by act of omission either (let himself or others die). In respect of one's own preservation, for example, one has no right to forfeit voluntarily one's inclusive claim right to use the goods of the world for one's survival (see pages 26-28).

There can be no such negative in personam right in Locke's theory. "No one", he says, "may forego that which is necessary to his life" (TT2:23). In respect of others' preservation, it follows that one may not deny the needy those goods necessary for their preservation - to let other people die of hunger or lack of shelter is to kill them by act of omission. These perpetual duties or mandatory rights of preservation, thus, have clear implications for property rights as we shall see shortly.

It is held by most commentators such as Lamprecht, Raphael, Bedau, Peffer, Paul, Wolff and Williams that all the natural rights in Locke's theory are rights that are correlative to obligations of forebearance (on the part of others) and that none are correlative to obligations of performance (on the part of others). In terms of Feinberg's classification of rights (see Introduction) all Locke's natural rights are negative in rem rights; there are no positive in rem rights for there are no rights to be given goods that one lacks - even if they are vital to one's very survival. Thus, Locke's statements that:

Men being once born have a Right to their Preservation and consequently to Meat and Drink and other such things as Nature affords for their Subsistence (TT 2:25, 1-4)

and

He that is Master of himself and his own Life has a Right too to the means of preserving it (TT 2:172, 26-7)

are usually interpreted in a purely negative sense. The right to one's preservation is merely the right to be left alone to fend for oneself and one's family, by, for example, gathering nuts from unowned trees, or moving on to unowned land to cultivate it and make it productive. One has a right that others do not thwart one in such activities. Others

have a correlative duty of forbearance. But, as we have just seen, it follows from Locke's argument, that there should be positive in rem rights to welfare as well. I shall argue, later in this chapter, that while most of the rights in Locke's theory are negative as commentators have pointed out, he does admit, in addition, a positive in rem right to aid, and that this has been neglected for philosophers have concentrated their attentions on Book Two of the Two Treatises and have ignored Book One in which Locke gives his clearest statement of the positive in rem right to aid. It is now time to turn to Locke's theory of property.

2. Common Ownership and Private Appropriation

2.1 Common Ownership

Locke's theory of property begins with an assumption derived from the Natural Law notion that man inhabits the Earth in accordance with a Divine Plan and that those things which are present on the Earth were put there for the use and benefit of all men. The assumption, then, is that land and its fruits are, or were, given to men as a class of beings. They were not, as Filmer thought, given to a particular man or set of men, namely, Adam and Adam's heirs. Because Filmer took positions diametrically opposed to some of Locke's deepest theological and political convictions, he felt compelled to contest them.

Locke attempts to refute Filmer's theory by offering an alternative interpretation of the Scriptures. The importance of scriptural interpretation is fundamental to the argument for the scriptures are a revelation of God's intentions for man. In them God reveals how the Earth and its fruits are to be used. Clearly, if there is a Natural Law obligation to preserve mankind and men also have natural rights to their preservation it is very important to know how the world is to be used to secure this end. The text that occasions the dispute is 1' Gen. 28

And God blessed them and said unto them, be fruitful and multiply, and replenish the Earth and subdue it, and have dominion over the Fish of the sea, and over the fowl of the air ... (TT1:23, 1-5)

According to Filmer, such dominion and property is private dominion and private property. Thus, he argues that God gave Adam (and Adam's

heirs) private property in the Earth and its creatures. It is this equation of dominion and property with private dominion or private property that Locke denies. Locke agrees that property or dominion was granted to Adam but this is not the same as private dominion or private property:

I shall show ... that by this grant God gave him (i.e. Adam) not Private Dominion over the Inferior Creatures, but right in common with all mankind; so neither was he Monarch upon the account of Property here given him. (TT 1:23, 15-16)

And:

Whatever God gave by the words of this Grant, 1. Gen. 28, it was not to Adam in particular exclusive of all other men. Whatever Dominion he had thereby it was not a Private Dominion, but a Dominion in common with the rest of Mankind. (TT 1:29, 1-4)

Locke thus denies that God gave to Adam and his heirs exclusive private property rights over the World and its fruits such that other men could be denied access to the use of these goods. Dominion is not an exclusive right of ownership, the right to exclude others from possession. Dominion is dominion in common. "God in this donation gave the World to mankind in common and not to Adam in particular"⁵⁸. Dominion is an inclusive right in that it includes all men. Men have a right not to be excluded from the use of the world; they have a right to use the world which was donated to them all. They have a moral title or claim to be able to use the world which God gave them all for the sake of preservation and support.

God ... himself gave them all a Right, to make use of the Food and Rayment, and other conveniences of Life, the materials whereof he had so plentifully provided for them. (TT 1:41, 12-17)⁵⁹

By this idea of "dominion in common" Locke attempts to establish the social and economic equality of men in the state of nature. We have seen how, for Locke, there are no natural superiors on Earth. All men are equally God's workmanship and no man makes other men. Filmer's right of private dominion would in fact ensure that some men were superiors, for some men, by virtue of their birth, by virtue of being Adam's successors, would be at an advantage over the rest of mankind. It is this that Locke is seeking to deny in his lengthy and detailed rejection of Filmer's interpretation. God did not favour some men over others. (The significance of this point and its relation to the duty and right of preservation will become clearer later in the chapter.)

Men have only a use right in respect of the World for God is the real maker and thus the sole proprietor or owner of it. The world is entrusted to men for their use. God has given them permission to use it.

In respect of God the Maker of Heaven and Earth who is sole Lord and Proprietor of the whole World, man's propriety in the Creatures is nothing but that Liberty to use them which God has permitted. (TT 1:39, 49-52)

Men may only use the World for the ends that God prescribes, namely subsistence and enjoyment. Locke clearly notes that God intends use to cover more than bare subsistence. God, he says "gives us all things richly to enjoy" and "the Earth and all that is therein is given to men for the Support and Comfort of their being". (TT 1:26, 3-4)

2.2 The Need for Private Appropriation

A moral title or claim right to use the World which belongs to us all is, by itself, insufficient, for with this right alone there is no possibility of actually using any objects in the World. This inclusive claim right is not, as we have seen, a right of private property or private possession. By this right no ownership is possible. Therefore, at some stage an exclusive right is required so that men may eat and wear what is necessary for their preservation. There needs to be some individuation of that to which all men equally have a moral title.

Locke argues, as we have seen, that God "hath given the World to mankind in common for the support and comfort of their being". Clearly, if the Earth is to provide such support and comfort, there must be a morally permissible means to appropriate portions of it, for if no particular man were entitled to use any of it, it would support and comfort no one. Men have a natural right to their own self-preservation and since this right only makes sense if we understand it to imply that we may appropriate what we need to keep us alive, Locke concludes that there must be a way in which men may justifiably acquire or appropriate what he needs to preserve himself:

... Nobody has originally a private Dominion exclusive of the rest of Mankind ... as they are thus in their natural state, yet being given for the use of men, there must of necessity be a means to appropriate them some way or other before they can be of any use, or at all beneficial to any particular Man. (TT 2:26, 8-12)

Again, with respect to land, Locke argues:

God gave the World to Men in Common; but since he gave it to them for their benefit, and the greatest Convenience of Life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated.

The justification of individual appropriation from what is common to all rests on two fundamental assumptions; namely, that the Earth is given to all men in common, and that all have a natural right to life (or preservation). The right to appropriate what one needs is a natural right just because it is a consequence of the assumptions of Natural Law. It is a right that can be known to us by Reason and Revelation.

We can summarise Locke's argument thus far as follows:

1. God's intention in giving the Earth to all men is "the support and comfort of their being".
2. For the fulfilment of this purpose, a certain kind of action is required of men, namely, private appropriation.
3. If a certain kind of action is demanded of men for the fulfilment of a Divine Intention, it must be morally permissible for men to do the action in question.
4. Therefore, it is morally permissible for men to appropriate.

2.3 The Problem of Private Appropriation

Locke agrees with Grotius and Pufendorf that the Earth has been given to mankind in common and Filmer's theory that God has given the Earth to Adam "and his heirs in succession, exclusive of all the rest of his Posterity" is brushed aside with disdain. However, the theory of a common donation poses a problem, namely the problem of accounting for the emergence of the exclusive rights associated with ownership. Since all men have an equal claim to all things, how does the mere physical act of appropriation have the effect of excluding others from the object? The problem is posed by Locke thus:

This being supposed, it seems to some a very great difficulty how any one should ever come to have a property in anything.
(TT 2:25, 8-10)

The solution that Pufendorf and Grotius offer is that it was a primeval

compact among men in which each agreed to respect the acquisitions of others that gave rise to particular exclusory rights and obligations with respect to things. Pufendorf asserts:

The first convention among men was about those very concerns, to the effect that whatever one of those things which were left open to all, and of their fruits, a man had laid his hands upon, with the intent to turn it to his uses, could not be taken from him by another.⁶⁰

The agreement need not have been explicit; tacit acceptance was a sufficient mark of consent⁶¹.

This idea of a primeval compact among men was subjected to a very thorough criticism by Filmer. In his Observations upon Grotius's De Jure Belli et Pacis he writes:

Certainly it was a rare felicity that all the men in the World at one instant of time should agree together in one mind to change the natural community of all things into private dominion; for without such a unanimous consent it was not possible for community to be altered; for if but one man in the world had dissented, the alteration had been unjust, because that man by the Law of Nature had a right to the common use of all things in the world ...⁶²

Locke also considers it implausible to presume that a social contract had been made at this stage to regulate the distribution of the necessities of life. He does not comment on Filmer's point about the one "mean and base" individual being sufficient to wreck the pact. Instead he makes his own criticism. "If such consent as that was necessary", he argues, "Man had starved notwithstanding the Plenty God had given him"⁶³. It is sometimes argued that Locke rejects the idea of a contract because such a contract tends to limit the holdings of each individual, and Locke is interested in justifying extensive accumulation of property - the kind of extensive accumulation that an emerging Capitalism would demand. It seems instead that Locke rejects the idea of a contract because he judges that it is implausible. If each man has to wait for the consent of all others before he can gather one nut, he would starve "notwithstanding the Plenty" in the World. Thus, for Locke, there must be some morally permissible means for individuals to appropriate those things they need for preservation, some way for particular men to establish a claim to make certain external goods "their own", that overrides the common claim of all men, but a way that excludes a social contract.

2.4 Locke's Argument for Private Appropriation

Though the Earth and all inferior Creatures be common to all men, yet every Man has a Property in his own Person. . This nobody has any right to but himself. The Labour of his Body and the Works of his Hands, we may say, are properly his. Whatsoever, then he removes, out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property. It being by him removed from the Common State Nature placed it in, hath by this Labour something attached to it that excludes the common right of Men. For this Labour being the unalterable Property of the Labourer, no man but he can have a right to what that is once joyned to, at least where there is enough and as good left in common for others. (TT 2:27)

The steps in Locke's argument for individuation or particularisation of common property are as follows:

1. Every man has a property in his own person.

Though the Earth and all the inferior Creatures be common to all Men, yet every man has a Property in his own Person. This nobody has any right to but himself.

2. Therefore, (from 1) every man has property in the labour of his body and the work of his hands.
3. By mixing his labour with something, he removes it from the commons by having "joyned to it something that is his own". Therefore, goods he removes from the State of Nature become his property.

This argument, the "labour argument" has been the subject of much criticism. A particularly strong attack has recently been made on it by J.P. Day who goes so far as to claim that Locke's first premiss is both "absurd and meaningless"⁶⁴. I shall try to show that Day misunderstands the point that Locke makes, and that his criticism is not valid.

Day summarises Locke's argument as follows:

- "1. Every man has a right to own his person.
2. Every man has a right to own the labour of his person.
3. Every man has a right to own that which he has mixed the labour of his person with."⁶⁵

PREMISES 1 and 2

Day states that the kind of right that Locke intends in his first premiss is clearly a moral and not a legal right. But this premiss makes no sense for "it is unintelligible to talk of A having a moral right to do X, unless there is a possibility of him not doing X". The premiss is as absurd as, for example, the premiss that bachelors have a right to be unmarried. The latter is absurd because they can be no other. Day

is clearly correct that a bachelor insofar as he is a bachelor is unmarried, and can only be unmarried to be referred to as a "bachelor". But suppose one thought that all had the duty to enter into a marital relationship and propagate offspring ("increase and multiply"). It seems then that one could deny bachelor, A, his moral right to be a bachelor even though he is in fact one. That is, one could deny the bachelor his moral right to be unmarried even though, as a bachelor, he can be no other. Similarly, a thief insofar as he is a thief is one who steals. But is it absurd to deny the thief's right to be a stealer, since as a thief he can be no other?

Moreover, it does not seem to be at all absurd to talk of a man's having a right to own his own person for there is a possibility of a man's being owned by another as in a relationship of slavery. For Locke, of course, all men in the State of Nature are "free and equal", and in this passage, Locke is simply restating the point.

What does Locke mean when he says "Every man has a Property in his own Person"? Locke argues, as we have seen, that men's lives are entrusted to them by God. God has given to each individual the use-right of his person. Each has the right to use (control, direct and manage) his person, to determine the course his life will take, but within the bounds of the Law of Nature. He is, in this respect, "Master of himself and of his own Life". No other person is his master. "Each one has a Liberty to dispose of and order as he lists his Person and Actions ... and his Whole Property within the Allowance of those Laws under which he is" (TT 2:57). For example, an individual may make a contract in which he places his labour under the direction and disposal of someone else for a specific time or for a specific task. The rights to use and dispose of one's own person are not without limitations. The Law of Nature (and, as we shall see shortly, Civil

Law) regulates the extent of one's rights. Thus, for example, one may not sell oneself into slavery, nor may one dispose of oneself by suicide. To have a property (right) in one's person and in the labour of one's person is, then, to have the right to dispose of one's person and actions (one's labour, skills and capacities) as one chooses but within the bounds of the Law of Nature or Civil Law (which must be compatible with Natural Law).

The Lockean concept of "a property in" one's person must, therefore, be carefully distinguished from full liberal self-ownership. Full Liberal self-ownership includes the rights to destroy oneself and to sell oneself into slavery. Lockean ownership or property in one's person does not include these rights. Moreover, the Lockean limit on the power of disposal (as we shall see) applies to property in external goods as well as to property in one's person. Individuals may not destroy, damage or waste any natural resources in which they have a property right. Again, Lockean rights in external goods must be carefully distinguished from full liberal ownership in such goods which, according to Becker⁶⁶ and Honoré, include the rights to destroy and waste.

CONCLUSION

The labourer, Locke argues, mixes his labour which is his "unquestionable property" with that which is to be appropriated, and by so doing he annexes something to it that "excludes the common right of other men". Locke thus treats the case of labouring upon something as analagous to the case of mixing a substance we own with another that we do not own. Olivecrona suggests that the concept of mixing is a metaphor. "It would be absurd to contend that the labour of killing a deer or picking an acorn from the ground is, in the exact sense of the expression, 'mixed' with the deer or the acorn respectively"⁶⁷. An activity may be directed upon a substance, and may affect or alter the substance, but it makes no sense to speak literally of an activity being mixed with a substance. Besides the conceptual problem associated with "mixing", there is the further problem that there seems to be no intuitive warrant for the supposition that mixing gives title. "If I own a can of tomato juice and spill it into the sea", Nozick asks, "do I thereby come to own the sea, or have I foolishly dissipated my tomato juice?"⁶⁸ A property claim thus cannot be granted on the basis of the kind of "mixing" that Locke has in mind. If it is to be granted at

all, it would have to be granted on the basis of the more usual concept of "labour". The question of whether labour entitles will be examined shortly. But first we must examine the charge that premises 1 and 3 are incompatible.

THE COMPATIBILITY OF PREMISS 1 AND CONCLUSION

The compatibility of premiss 1 and ^{Conclusion} has recently been called into question by Becker:

The fact is that without some modification of one or both propositions, 'Everyone has property in his own body or person' and 'Everyone is entitled to the fruits of his labour' are strictly incompatible. They are incompatible because, supposing they are true of everyone, then either (1) parents are entitled to property rights in their children (as the fruits of their labour) in which case not all people have property rights in their own persons (or bodies) - namely those with living parents who have not relinquished their rights in their children; or, (2) parents are not entitled to property rights in their children, in which case they are not (always) entitled to property rights in the fruits of their labour.⁶⁹

If the two premises are incompatible, one of them must be dropped or modified. Becker argues that it is unlikely that Locke would want to drop or modify the first one, that is, drop or modify his claim that every man has a right to his own person⁷⁰. This is surely correct, for, as we have seen, Locke argues against Filmer that all men are born free and equal. There are no natural superiors on Earth for the hierarchical relationship between God and man has no counterpart on Earth between some men and others. It was not God's intention, Locke argues, to set some men above other men, fathers above sons, men above women, or older above younger.

Becker suggests that it must be the premiss that grants to each the fruits of his labour that must be rejected or modified. One may take the "other alternative" and "insist that people do not always have a right to the products of their labours - specifically, that they do not have such rights when their labour produces other people". But how, Becker asks, is "such a restriction to be justified as anything other than an ad hoc device to square Locke's arguments with conventional moral principles?" After all, "if anything is clearly a product of one's labour, a child is. It seems unlikely that anything will be found in the nature of the labour involved in conception, gestation, birth and nurturing which will distinguish it sufficiently from the labour involved in cultivating a garden to justify using the latter

in a Lockean argument but forbidding the use of the former"⁷¹.

Now Becker is clearly correct that if one has a property right in the fruits of one's labours, and if one's children are the fruits of one's labours, then one would have property rights in one's children. But are one's children the fruits of one's labours? It is Becker, not Locke, who contends that "one's children are properly described as the fruits of one's labours". Earlier in this chapter, it was pointed out that Locke argues for a Creationist and not a Traductionist account of life. All men are "God's workmanship", no man creates other men; only God can do this. "T'is in him alone that we live, move and have our being". (TT 1:52, 10-14)

His Fatherhood is such an one as utterly excludes all pretence of Title in Earthly Parents; for he is King because he is indeed Maker of us all, which no parents can pretend to be of their children. (TT 1:53, 17-26)

Children are thus the fruits of God's labours; they are his workmanship, not their parent's workmanship. Becker wrongly attributes to Locke the Traductionist theory - the very theory that Filmer holds and Locke rejects. Thus, it is not the case, as Becker argues, that "Everyone has a property in his own person (or body)" and "Everyone is entitled to the fruits of his labours" are incompatible. They are compatible because children are the fruits of God's labours and not the fruits of men's labours. Men are still entitled to the fruits of their labours for this excludes one's children, and children have rights to their own persons.

A VALID DEDUCTION?

Day argues that Locke's deduction of ~~the Conclusion~~ from premiss 2 is invalid in that it is possible to accept the premiss that "every man has a right to own the labour of his person" while rejecting the conclusion that "every man has a right to own that with which he has mixed his labour"⁷². "How is it", Becker similarly asks, "that the property rights to one's body 'transfer' or extend to property in the products of one's labour? Insofar as one's labour is inseparable (by way of ownership rights) from one's body, it is understandable how the first "extension" from ownership of the body to ownership of the labour - is warranted. But the same can hardly be said for the second extension - from ownership of labour to ownership of labour's products. The products of one's labour are clearly separable from one's body. And

Nozick's question remains: Why is it that investing one's labour in something causes one to come to own that thing? Why does it not instead just mean that one has lost the investment? ... (or) Why does it not just mean that you are entitled to public admiration? Or, the gratitude of your fellows?"⁷³

It is clear that both Day and Becker believe that Locke, in this passage, is advancing a full justification for private appropriation. But this is not so. He has already provided an argument to show that men have the right to take and use natural resources for their preservation and comfort. Becker and Day lift the "labour argument" out of its context, ignoring all that Locke has said before, and, thereby, miss this important right upon which the rest of the argument depends.

Locke never supposes that without a prior right to the goods in question, labour alone will give a man title. If a man mixes his labour with goods to which he has no right - say, he has stolen them from someone else, or taken more than his share (see p.38) then he will have no title to the goods, however painstaking or diligent his labour.

In Locke's account, men have a Permissive or Liberty Right to take and set to use unowned goods in the world because God gave the world to mankind in common for their support and enjoyment. His intention was that they should appropriate the goods of the world and he therefore gave them a permissive right in this respect. If a man had a right to own the labour of his person, but no right to appropriate the goods of the world, then his "mixing" his labour with them would not give him title. He would merely lose the investment of his labour. The Liberty (Permissive) Right to use and appropriate the goods of the world is as important as the right to own one's person and labour. Both rights are clearly required for "mixing" to give title. The importance to Locke's theory of the Permissive Right to appropriate and the consequences of not admitting such a right are humorously outlined by Spencer:

If no man can equitably become the exclusive possessor of any article, or as we may say, obtain a right to it ... then among other consequences it follows that a man can have no right to the things he consumes for food ... wherefore pursuing this idea we arrive at the curious conclusion that as the whole of his bones, muscles, skin etc. have been built up from nutrients not belonging to him, a man can have no property in his own flesh and blood, can have no valid title to himself,

has no more claim to his own limbs than he has to the limbs of another, and has as good a right to his neighbour's body as his own.⁷⁴

In their analyses of Locke's argument, both Becker and Day fail to take account of this Permissive or Liberty Right. But once this right is omitted, it becomes unclear why labour alone may give a man title to that upon which he has laboured.

It is important to note that the right to take goods for one's preservation is not even optional; it is, for Locke, a mandatory right or duty - that is, one must take some of the world's resources for this end. "No one", Locke says, "may forego what is necessary to his life". Thus, a man cannot even waive his right to take those goods with which he has mixed his labour when those goods are necessary to his preservation.

3. Individual Labour and Familial Property Rights

Earlier in this chapter, reference was made to the Natural Law requirement to provide for one's children. Although, in Locke's account, it is individual labour which gives rise to property entitlements, the entitlements to which it gives rise are familial, not individual. Locke's primary economic unit is the family.

For Children being by the course of Nature, born weak, and unable to provide for themselves, they have by the appointment of God himself, who hath thus ordered the course of Nature, a Right to be nourish'd and maintained by their Parents, nay a right not only to a bare Subsistence but to the convenience and comforts of Life, as far as the Conditions of their Parents can afford it. (TT 1:89)

Property and labour of the parents are the necessary means to acquire the provisions required for the maintenance and (if possible) the comforts of the children. Thus, a parent does not acquire an indefeasible personal title to property simply by the investment of labour. Any nuts that a parent gathers, any deer he hunts, the produce of any land tilled and sown, is his but subject to the joint rights of his dependents.

Men being by an Obligation bound to preserve what they have begotten, as to preserve themselves, their Issue come to have a Right to the Goods they are possessed of. (TT 1:88)

By propagating offspring, parents have the mandatory right and duty

under Natural Law to supply their children with the necessities and (if they can afford it) the comforts of life. To this end, parents incur an obligation to remain within the relationship of marriage for the full term of their children's dependency. The marriage must last "so long as is necessary to the nourishment and support of the young ones, who are sustained by those that got them, till they are able to shift and provide for themselves" (TT 2:79).

While the parents live, their children share a title to their goods; the parent's entitlement is a kind of joint tenancy with their children. When the parents die, their children acquire the whole of the property, also by natural right, (but subject to the needs of other persons, see pages 57-64).

Every Man is born with ... A Right before any other man, to inherit with his Brethren, his Father's Goods (TT 2:190)

The parent's obligation to preserve what they have begotten:

Gives Children a Title, to share in the Property of their Parents, and a Right to Inherit their Possessions. Men are not proprietors of what they have merely for themselves, their Children have a Title to part of it, and have their Kind of Right joyn'd with their Parents, in the Possession which comes to be wholly theirs, when death having put an end to their Parents use of it, hath taken them from their Possessions, and this we call Inheritance. (TT 1:88)

All the children have a right in the parent's property. Locke, thus, argues against Filmer's doctrine of primogeniture. If the rationale of inheritance is the parental duty to preserve offspring and, if possible, to maintain and leave them in comfort, then there can be no distinction between first- and last-born, male and female. This by itself is sufficient to dispose of Filmer's contention that all the property in the world is vested in a single line (TT 1:91). Locke, in fact, adds that, if any child is to have precedence, it should be the last-born, not the first-born, since it is the last-born who is likely to be in greatest need of sustenance at the parent's death.

4. The Limits to Property Acquisition

Locke's argument for the justification of original individual appropriation is as follows: if we assume that (1) the Earth is given to all in common, and (2) all men have a natural right to life (self-

preservation), and (3) all men have a property in their own person; and if we argue that (2) implies some justifiable form of appropriation and (3) implies that this justifiable form of original appropriation is possible via human labour (as the latter is part of our property in our person), we may then conclude that an individual man may with justification appropriate something if he mixes his labour with it with the objective of satisfying what he will need for "the advantages of life".

Pufendorf, as we noted earlier, argued that any exclusive right to external property must be based on a contract so that the interests of others will not be prejudiced - the idea being that if every man is party to the contract, the holdings of each will be limited to the extent that they do not prejudice other men's interests. Locke, therefore, has to show how, in the absence of such a contract, others' interests are not prejudiced.

As Locke sees his assumptions (1) and (2) in the above argument as having limiting implications, the above conclusion gives the necessary but not sufficient conditions for justifiable appropriation. Assumptions (1) and (2) clearly imply certain restrictions on the amount and degree of morally legitimate appropriation. As regards assumption (1), that each man has the claim right to use and enjoy the fruits of this world naturally limits the amount of things in which any particular person can have a property. If a man comes to have a property in things to the extent that it excludes others from the exercise of that claim right, then this possession ceases to be his property. At the foundation of Locke's theory is not an exclusive right of the type found in Filmer's theory (and, as we shall see, in Hume's and Nozick's theories) but a right of all to be included in the use of the World's goods. That there is this prior right makes all the difference. A similar limitation is engendered by assumption (2). As a man's right to life is inalienable, and he has a natural right to preserve himself, it is clear that any attempt to appropriate what is necessary to fulfil the needs of another, would infringe upon the right to life of that other man, the right he has to preservation or a continued existence in this World. For Locke, natural rights have correlative duties, one of which is the duty to forebear when another is engaged in a practice that Natural Law enjoins. The very

possibility of ascribing an individual right to each man seems to demand this.

Locke explicitly discusses two limits to appropriation. Each will be discussed separately.

By the first limitation, a man is entitled to that which he acquires by the labour of his person only "where there is enough and as good left in common for others"⁷⁵. We can call this the Sufficiency Limitation. It is clearly both a quantitative (enough) and a qualitative (as good) limitation on original acquisition. The idea is that when a man takes so much that he fails to leave others with "as much and as good", he has taken more than his fair share; he has no right to own that with which he has mixed his labour. If the World belonged to nobody, and there was no contract between men, the idea of a fair share would make no sense. A man who seized a very large portion would not, by so doing, be taking that which belonged to another. An unfair share is an excess that deprives another of his right, of that which belongs to him, or to which he has a claim. It is a share that excludes another who has a right to be included in the distribution.

Locke argues that before the introduction of the institution of money this Sufficiency Limitation was met naturally because of the abundance of land and the limited ability of men to labour:

Nor was this appropriation of any parcel of Land by improving it, any prejudice to any other Man, since there was still enough and as good left; and more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his enclosure for himself. For he that leaves as much and as good as another can make use of, does as good as take nothing at all (TT 2:33, 1-7)

and

Men were more in danger to be lost, by wandering from their Company, in the then vast Wilderness of the Earth, than to be straightened for want of room to plant in. (TT 2:36, 11-14)

We may call the second limitation the Spoilage Limitation. Locke argues:

It will perhaps be objected to this, That if gathering the Acorns, or the Fruits of the Earth etc., makes a right to them, then any one may ingross as much as he will. To which I answer, Not so. The same Law of Nature that does by this means give us Property does also bound that Property too. God has given us all things richly, 1 Tim. vi. 17 is the voice of Reason confirmed by Inspiration. But

how far has he given it us? To enjoy. As much as anyone can make use of before it spoils; so much he may by his labour fix a property in. (TT 2:31, 1-9)

Locke thus argues that individual appropriation is to be limited so that one does not accumulate more than one can use and hence have a surplus that would go to waste. Since the World is given to all in common and thus does not belong to any one person, and since being able to appropriate what one needs to live is implied by the right to life, allowing something to spoil could infringe on the natural right of others (especially in conditions of scarcity). Any more than a man can use is thus not his share; it belongs to others. He has invaded his neighbour's share.

A man can thus appropriate what is necessary for the advantages of life. This does not restrict him to the current consumption of necessities. Locke points out in this passage that "God has given us all things richly" and "to enjoy". It is not bare subsistence. Man can thus appropriate property for the sake of need and enjoyment; both are rightful uses.

Locke's argument, justifying original individual appropriation may be summarised as follows:

An individual can justifiably appropriate some external good if and only if:

1. He has mixed his labour with it with the objective of preserving and enjoying his life.
2. In so appropriating he does not either:
 - (a) accumulate more than would leave "as much and as good" for others, or
 - (b) accumulate so much that there would be a surplus which would spoil.

These restrictions are not restrictions on appropriation per se; they are restrictions on appropriation beyond certain limits. They limit the amount of property any one man can hold. When these conditions are met, the goods become a man's legitimate property.

It is held by some philosophers such as Macpherson that Locke intends "to supply the moral basis of that stage of economic advance called the dictatorship of the Bourgeoisie; that is, a state of unrestrained Capitalism, brutal in its treatment of the labouring classes, ruthless in its destruction of traditional values, of all social ties that impede the advance of the propertied classes. Locke is thus arguing for nothing less than the rightful absolute power of the propertied classes, for a morally justified tyranny of the employers over the employed"⁷⁶. Ryan summarises Macpherson's interpretation of Locke as follows: Locke's doctrine marks "an important break with Medieval attitudes to labour and property which were concerned to emphasise the obligations of a man to society, and to his fellows, not his rights against them". So the rational man sets about accumulating property, and because his right is derived from his absolute right to his own labour, this right is absolute too⁷⁷.

If it is labour, a man's absolute property, which justifies appropriation and creates rights, the individual right of appropriation overrides any moral claims of the Society. The traditional view that property and labour were social functions and that the ownership of property involved social obligations is thereby undermined.⁷⁸

Macpherson argues that Locke secures the right to unlimited accumulation. Such unlimited accumulation which an emerging Capitalism would demand clearly could not be justified in the light of the limited rights of ownership resulting from Locke's basic Natural Law assumptions and the two explicit restrictions that he makes. In order to justify this unlimited accumulation, both the Sufficiency and Spoilage Limitations must be transcended.

According to Macpherson, Locke never explicitly argues against the Natural Law restrictions. However, they are transcended by being shown to be irrelevant once the institution of money has been introduced into the State of Nature. Before turning to the issue of the alleged transcendence of the two limitations, I want to deal with some preliminary points that are pertinent to the argument.

Macpherson argues that one of the key concepts in Locke's theory is that of rationality. "God", Locke writes, gave the World "to the use of the Industrious and Rational"⁷⁹. Rationality, according to Macpherson's interpretation, is equated with the ability to amass goods and to go on amassing them up to the limits set by the Law of Nature. A

rational man is one who obeys the Law of Reason. A moral man is one who obeys the Law of Nature which is a declaration of God's will and a standard of right and wrong. As the Law of Reason and the Natural Law are one and the same, it follows that it is not only rational but morally commendable to acquire and accumulate goods. It is morally excellent to accumulate. Success in so doing is a moral virtue and failure in so doing a moral vice. Hence the man with property is of more moral worth than the man who lacks it. The man with property is fully rational while the man who lacks it is not so. As citizenship and freedom, according to Macpherson, depend on the possession of rationality, it will follow that he who lacks it, (he who is property-less) will have no rightful claim to full membership of Civil Society. Hence the Labouring Classes are, according to this reading of Locke, said to be lacking a rational and moral faculty, and hence they are rightly denied the full citizenship which depends on the possession of these faculties.

My first criticism of Macpherson's account concerns his interpretation of the concept "reason". "Reason", he believes, is a faculty possessed by the Bourgeoisie alone. That the rational faculty and the ability to use it fully is the prerogative of one set of men only is expressly denied by Locke. "Reason" is a name which

Stands for a faculty in man, that faculty whereby man is supposed to be distinguished from beasts, and wherein it is evident he much surpasses them. (EHU 3, vi, 4)

It is by using this faculty that men are able to know what the Law of Nature requires of them:

The State of Nature has a Law of Nature to govern it, and Reason which is that Law teaches all mankind who will but consult it. (TT 2:6, 6-8)

Locke states that the Law of Nature "obliges everyone". We also saw earlier that one of the Natural Law obligations is that men should lead a rational life. Now, clearly if the Labouring Classes lack rationality they could not be expected to lead a rational life. As "ought" implies "can", adherence to a rational life could only be expected of them if they possess the faculty of reason. Locke admits this:

For although the Law is binding on those to whom it is given, it does not, however, bind those to whom it is not given, and it is not given to those who are unable to understand it. (ELN 203)

But only "children" and "ideots" are unable to understand the Natural Law. Locke is clear that the faculty of reason is not possessed by

one class alone. All men are rational. In addition to the quotes given above, he also says:

... We are born Free, as we are born Rational; not that we have actually the exercise of either; Age that brings one, brings with it the other too. (TT 2:61, 1-3)

The only persons other than the young who are not qualified by rationality are:

"Lunaticks and Ideots" and "Madmen" (TT 2:60, 9 + 12)

However, it may be the case that while the working poor are morally rational, that is, capable of rational insight into the Law of Nature, they are not economically rational, that is, capable of living an economically rational life. In Macpherson's view, Locke regards the working poor as incapable of such a life. He offers as evidence Locke's attitude towards them in his essays on interest and money and in the Reasonableness of Christianity. There they are characterised as "living from hand to mouth", incapable of any thoughts above those of securing immediate subsistence, and subject to fomenting civil disturbances in times of great distress. Landowners, in contrast, are supposedly, in Locke's view, the epitome of rationality.

But this is far from the case. Macpherson does not take into account instances where labourers are described as being economically rational or instances where property owners are described as irrational. Consider the following passage:

For it cannot be thought that all or most of the labourers pay away all their wages constantly, as soon as they receive them and live upon trust till next pay-day. This the farmer and tradesman could not well bear; were it every labourer's case, and every one to be trusted; and, therefore, they must of necessity keep some money in their hands to go to market for victuals, and to other tradesmen as poor as themselves, for tools; and lay up money too to buy cloaths, and pay for those they bought upon credit. (Con. Int Money pp.33-34)

There is clear evidence here that Locke holds labourers to be, on the whole, economically rational in their circumstances. They resist the temptation to spend all their wages immediately they receive them; they make purchases within their means, and calculate future contingencies. They buy on credit those goods they need such as tools and clothes but which they cannot afford at the time. Labourers "may well enough carry on their part if they have money enough to buy victuals, cloaths and tools". Locke shows how they set about securing these goods in an economically rational way. They live "from hand to mouth" only in the

sense that they never have "any great sum of money lying still in their hands".

Landowners, however, are not always described as being economically rational. In considering the question of what are the causes of a high number of landlords wanting to sell their property, Locke avers:

And to that the answer is obvious, general ill-husbandry, and the consequence of it, debts. If a neglect of government and religion, ill examples, and depraved education have introduced debauchery; and art, or chance, has made it fashionable for men to live beyond their estates; debts will increase and multiply, and draw with them a necessity on men, first of encumbering, and then selling their estates. (Con. Int. Money, pp.83-84)

Here, significantly, economic irrationality is linked to moral depravity, in Locke's view. Nor is this the only example of the economic irrationality of propertyowners in Locke's writings⁸⁰.

The celebrated passage which Macpherson cites to demonstrate Locke's views on the irrationality of the labourer comes in the middle of a discussion of the causes and consequences of the reduction by one-third of the money supply used in trade. Locke's description shows that everyone is apt to become irrational in such circumstances.

The usual struggle and contest, as I said before, in the decays of wealth and riches, is between the landed man and the merchant, with whom I may here join the monied-man. The landed-man finds himself aggrieved, by the falling of his rents, and the streightening of his fortune, whilst the monied-man keeps up his gain, and the merchant thrives and grows rich by trade. These, he thinks, steals his income into their pockets, build their fortunes upon his ruins, and ingross more of the riches of the nation than comes to their share. He, therefore, endeavours, by laws, to keep up the value of lands which he suspects lessened by the other's excess profit: but all in vain. The cause is mistaken and the remedy too. It is not the merchant's nor monied-man's gains that makes land fall: but the want of money and lessening of our treasure, wasted by extravagant expenses, and a mis-managed trade, which the land always first feels. (Con. Int. Money p.115)

In Locke's account, economic irrationality is no respecter of class.

My second criticism concerns Macpherson's point that rationality and morality are chiefly displayed in the acquisition of capital goods. Locke, as we have just seen, argues that rationality and morality are displayed in a man's knowing and abiding by the Law of Nature. But are they also displayed in the acquisition and accumulation of capital goods?

Acquisitiveness, covetousness and self-interest are clearly not moral virtues in Locke's theory:

Covetousness, and the desire of having in our possession, and under our dominion, more than we have need of, being the root of all evil, should be early and carefully weeded out; and the contrary qualities of a readiness to impart to others, implanted. (Works IV. 64)

Thus the vice of covetousness, the desire of possessing more than one needs is the root of all evil and should be "weeded out" and replaced by the virtue of generosity or liberality.

For Locke, self-seeking can never be the foundation of morality; the moral man more frequently deprives himself: "In fact a great number of virtues, and the best of them, consist only in this: that we do good to others at our own loss"⁸¹. To accumulate private wealth and pursue one's private interests is quite opposed to a moral life. In fact, all moral life would be "completely blotted out"⁸².

Besides (since there is nothing so sacred that avarice has not at one time or other treated it with violence), if the ground of duty were made to rest on gain, and if expediency were acknowledged as the standard of rightness, what else would this be than to open the door to every kind of villainy? (ELN 211)

To amass goods is always vicious, Locke argues, for the World's resources are finite. When a man is covetous and amasses goods, he is thus growing rich at the expense of others.

The inheritance of the whole of Mankind is always one and the same, and it does not grow in proportion to the number of people born. Nature has provided a certain profusion of goods for the use and convenience of men, and the things provided have been bestowed "in a definite way and in a predetermined quantity; they have not been fortuitously produced nor are they increasing in proportion to what men need and covet. (ELN 211)

And so when any man snatches for himself as much as he can, he takes away from another man's heap, the amount he adds to his own, and it is impossible to grow rich except at the expense of someone else. (ELN 211)

It is not surprising that Locke should argue in Book two of the The Treatises that God gave the world "to the use of the Industrious and Rational" and not to the Covetous⁸³. He who is industrious and rational labours according to the Law of Nature, and abides by the restrictions it imposes; he who is covetous desires to have in his possession more than he needs and he grows rich at the expense of other men. The traits and desires that Macpherson ascribes to the

industrious and rational man who are the very ones that Locke ascribes to the covetous man. The desire to amass goods and the power it engenders are the "two roots of about all the injustice and contention that so disturb human life"⁸⁴.

For Locke, neither economic rationality nor morality are displayed in the accumulation of capital goods. It is interesting to note that when Locke travelled in France in 1670, the people who most impressed him were not the successful accumulators, but the Huguenot peasantry. He said they were "rational creatures and Christians"⁸⁵, and although "under pressure of want and poverty" were diligent and sober, industrious and frugal. Again economic rationality and morality are closely linked. Locke does not equate virtue with achieved economic success in the market. Rather he approves of a certain personality-type and a social ethic appropriate to its functioning.

Earlier it was noted that those like Macpherson who believe that Locke is attempting to justify the process of capital accumulation argue that the two limitations on acquisition are transcended by being shown to be irrelevant once the institution of money has been introduced into the State of Nature. Once these two limits are transcended, no Natural Law restrictions stand in the way of he who wishes to accumulate. The door to unrestrained Capitalism is open; the way is paved for the rightful absolute power of the propertied classes and the morally justified tyranny of the employers over the employed. The labouring and unemployed classes have their rights so ruthlessly eroded that "their status is to be subject to civil society without being full members of it; they are in it, but not of it". ~ The state in Civil Society is set up by and for the propertied classes; it does not exist to protect the interests of all members of society and is totally insensitive to those in need. The propertyless have no rights; they are forced to sell their labour power for a pittance to keep body and soul together; if they fail to get work they must live off the charity of those generous enough to supply it and, if none is forthcoming, they must starve.

I shall try to show that while the Spoilage Limitation clearly becomes irrelevant, the Sufficiency Limitation does not become irrelevant. It is carried over into Civil Society, that social organisation that follows the State of Nature. In Civil Society no one is able to

appropriate freely as they did in the State of Nature; appropriation at this stage requires the consent of the current users of that land - precisely so that the interests of these users are not prejudiced, and they are left with as much and as good as before. I shall argue further that in Civil Society government regulates property; it does not act as a mere protection agency. Finally, in the following section I shall argue that, according to Locke's theory, the needy are not to be left to the mercy of those with property for they have a right or title to that which they need for the preservation of their lives.

4.1 The Introduction of Money into the State of Nature

Locke argues that men's labour in cultivating land enables a family to satisfy its needs from one-hundredth the amount of land required in a more primitive hunting society. Thus, "he who appropriates land to himself by his labour does not lessen but increases the common stock of mankind". Locke argues that the "labour theory" of appropriation would work naturally enough for even double the population if it had not been for the introduction of the institution of money⁸⁶.

Money has the effect of rendering the Spoilage Limitation irrelevant. The reason is that once money is introduced, a man can acquire more land and sell the products grown on it which he cannot use himself to others for the "use" and "convenience" of their lives. His selling his goods to others prevents their spoiling. Thus a man can control extensive amounts of property (in land) without breaking the basic restriction of Natural Law.

Thus I dare boldly affirm, That the same Rule of Propriety (viz) that every Man should have as much as he could make use of, would hold still in the World, without straightning any body, since there is Land enough in the World to suffice double the Inhabitants had not the Invention of Money and the tacit agreement of Men to put a value on it, introduced (by consent) larger possessions, and a Right to them.
(TT 2:36, 33-40)

and

They having by a tacit and voluntary consent found out a way, how a Man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus, Gold and Silver which may be hoarded up without injury to anyone, these metals not spoiling or decaying in the hands of the possessor. (TT 2:50, 4-10)

Money as a commodity to which men have tacitly consented functions not

merely as a means of primitive barter or exchange, but rather as something with value in itself, that is, as capital. It has a value which goes beyond its simple usefulness in exchange relationships. The result of the introduction of money is that some men become wealthy and powerful and others become poor. There is, as Locke says, "an inequality of private possession"⁸⁷.

If Locke were attempting to justify the process of capital accumulation and pave the way for unrestrained Capitalism, we should expect that he would argue that the institution of money was a great advance, a new era for man, the dawning of the Golden Age. But not so. The introduction of money, for Locke, signifies not the dawning of the Golden Age, but rather the end of the Golden Age. Ryan points out that Locke "identifies the desire of having more than we need with simple greed, and suggests that the pre-monetary State of Nature was the Golden Age". Further, "he clearly places the arrival of greed at the time of the invention of money"⁸⁸. In early times, Locke says, men's natural desires coincided with the demands of Natural Law. Their needs and wants were limited⁸⁹. This was the Golden Age. This

Golden Age (before vain Ambition, and amor scleratus habendi, evil Concupiscence, had corrupted men's minds into a mistake of true Power and Honour, had more Virtue, and consequently better Gouvenors, as well as less vicious subjects. (TT 2:111, 1-5)

It lasted only while there was no ambition or luxury⁹⁰. There was "little matter for Covetousness or Ambition", "the equality of a simple poor way of liveing confining their desires within the narrow bounds of each man's smal propertie made few controverses and so no need of many laws to decide them". The desire for more than one needs, the "enlargement of possessions" arrives only with the introduction of money. When money is introduced "you shall see the same Man will begin presently to enlarge his Possessions"⁹¹. Money alters man's desires but, not for the better, for, as we have seen, covetousness and the desire for more than we need is "the root of all evil" and should be "weeded out" before all morality is "completely blotted out". Money and the alteration of men's desires that accompanies its introduction are the causes of the disproportion and inequality of private possession⁹².

Money can be hoarded up without spoiling and it is thus responsible for the "enlargement of possession". This hoarding at first produced

no problems; it was "without injury to anyone" for land was still abundant. As land becomes scarce such hoarding does deprive others for there is no longer as much and as good left in common for others. The resources of the World are finite, so hoarding up when land is scarce ensures that there will not be as much and as good left in common for others. Does Locke then intend that this Natural Law limitation should disappear? Is it now irrelevant? Do the covetous and ambitious now have free reign to enclose land at will, impoverishing others and growing rich at their expense? It could be that this is what Locke intends, yet if so, it would be a radical change of heart on his side. Having argued that it is impossible to grow rich except at others' expense, that accumulation at the expense of others is the "most specious thing of all" and that the World was not given to the "use of the Covetous", it would be odd if he now argued just the opposite case.

Locke never argues that the Sufficiency Limitation becomes irrelevant or is suspended and what he says suggests that he does not intend that it should be suspended. Immediately after he has shown how the introduction of money into the State of Nature gives disproportionately large holdings to the covetous and ambitious he announces that Civil Law and government is introduced to regulate property.

It is plain that the consent of Men have agreed to disproportionate and unequal Possession of the Earth. This partage of things (has been made) practicable out of the bounds of Societie ... For in Governments the Laws regulate the right of property, and the possession of land is determined by positive constitutions. (TT 2:50, 4-15)

And amongst those who are to be counted the Civilis'd part of Mankind who have made and multiplied positive Law to determine Property.

In Locke's view, it is the increased inequality of wealth (especially in land) which money makes possible that leads to a state of violence and self-seeking in which the regulation of property by government and civil law become necessary. Locke argues that in civil society it is the job of government to regulate and determine property. In the next section, I shall examine in depth Locke's views and arguments for the legitimate role of governmental activity in respect of private property. I shall end this section by considering Locke's views on the civil or governmental regulation of common property.

4.2 Civil Law and Common Land

In Macpherson's interpretation, the government in civil society exists to protect the interests of the propertied Bourgeoisie. To this end, to aid the process of accumulation of wealth, civil laws may legitimately be passed enabling the Bourgeoisie to appropriate what they will from the common land without the consent of the commoners, thereby impoverishing these poorer members of society, and depriving them of their only means of livelihood. Now in the seventeenth century, wealthy men, members of the new propertied Bourgeoisie, were all too willing to appropriate from "the common" to enlarge their possessions. In the last quarter of the century, a number of Bills were introduced into Parliament to allow appropriation to occur without the consent of the commoners. It seems to be Macpherson's view that Locke is attempting to argue for the legitimacy of this process of expropriation of the poor by the wealthy. Civil law in Locke's theory is, thus, an instrument of oppression used by the Bourgeoisie to subjugate and impoverish the labouring classes.

This interpretation of Locke's position seems to be wide of the mark. Locke does not seem to be arguing for such a situation at all. He states that before Civil Law is introduced a man may appropriate from land held in common but without the consent of other men. This was legitimate appropriation because men were then under the law for appropriation. It was God's will that they should do so⁹³. Once Civil Law is introduced (by contract), men are no longer under the law for appropriation. Thus, they cannot appropriate without the consent of others⁹⁴ - these others being "the commoners" or present users of the land.

In Land that is common in England ... no-one can inclose or appropriate any part, without the Consent of all his Fellow-Commoners: Because this is left common by Compact i.e. by the Law of the Land which is not to be violated.

The land is common with respect to the commoners of a particular Parish or County. It is their "joint property" and cannot be taken from them without their consent. The reason is that if others could come and ingross from this common there would not be enough and as good as before. Locke is quite explicit on this point.

Besides the remainder after such inclosure, would not be as good to the rest of the Commoners as the whole was, when they could all make use of the whole.

That Locke should suggest that no appropriation should take place

without the consent of the Commoners because, were this to happen, enough and as good would not be left implies that he did not after all abandon the Sufficiency Limitation.

Now it might be pointed out that Locke in the first quotation does not argue that common land may not be appropriated by a member of the Bourgeoisie. Locke writes:

No-one can inclose or appropriate any part, without the Consent of his Fellow-Commoners.

This seems to mean that "no-one (commoner) may inclose or appropriate any part of the common land without the consent of his Fellow-Commoners". In other words, Locke is not saying "no part (of the common) may be taken by a non-commoner (e.g. a member of the Bourgeoisie) without the consent of all the commoners", but only that no part may be taken by one of the commoners without the consent of his fellow-commoners.

That Locke is making this reduced claim in respect of appropriation of the commons is most implausible for it would still be the case that

The remainder after such inclosure would not be as good to the rest of the Commoners as the whole was ...

Whether that enclosure was carried out by another commoner or a member of the Bourgeoisie, enough and as good would not be left for the others. The sufficiency limitation would be violated whoever enclosed a part of the common.

It should also be observed that Locke regards all attempts by the wealthy and powerful to use their positions to exploit, oppress or expropriate the poor with contempt, and it is therefore, most unlikely that he should believe such enclosure by the wealthy Bourgeoisie to be justifiable.

Is it reasonable ... that a Rich Man, who possessed the Whole Country, should from thence have a Right to Seize, when he pleased, the Cottage and Garden of his poor Neighbour? The being rightfully possessed of great Power and Riches exceedingly beyond the greatest part of the Sons of Adam, is so far from being an excuse, much less a reason, for Rapine and Oppression, which the endamaging another without Authority is, that it is a great Aggravation of it. For the exceeding the Bounds of Authority is no more a Right in a great, than a petty Officer; no more justifiable in a King, than a Constable.
(TT 2:202)

Persons "possessed of great Power and Riches" have neither "reason" nor

"excuse" to "oppress" the poor or take from them the little they have. Moreover, enclosure of the common land by the wealthy and powerful seems to be a clear case of "endaming others without Authority" for Locke argues that common land remains such "by the Law of the Land which is not to be violated". Civil law, in Locke's theory, is, thus, not an instrument of oppression used by the rich and powerful Bourgeoisie to subjugate and impoverish the labouring classes.

5. Private Property and Welfare in Civil Society

According to many interpreters of Locke's theory, it is the job of government in civil society to protect property, but not to regulate or determine its distribution and (where appropriate) its redistribution. In other words, it is believed that Locke is arguing for the minimal, nightwatchman state of the classical liberals, "limited to the narrow functions of protection against force, theft, fraud and enforcement of contracts". The state may not redistribute property at all - that is, it may not use its coercive apparatus to "get some citizens to aid others" - nor may it initiate substantive social and economic policies even to alleviate great hardship and poverty. I shall show in this section that, for Locke, government has a fiduciary role, that it is intended to be first for the good of the community and all the individuals who make it up, second to be supportive of the Law of Nature, and third, to be a vehicle of God's care for his people. I shall show further that this fiduciary role encompasses not only the (negative) safety and security of life, liberty and estate, but also some positive public welfare in the form of redistribution of property and appropriate economic policies.

5.1 Regulation of Private Property and the Common Good

It is true that Locke often speaks of protection of property by government. Yet it is equally true that he speaks of its regulation and determination by government⁹⁵. Regulation implies direction, control, adjusting, ordering, disposing of, whereas protection implies guarding, defending, securing and preserving. Locke writes:

It is fit to consider that every Man when he, at first, incorporates himself into any Commonwealth, he, by uniting

himself thereunto, annexed also, and submits to the Community those Possessions, which he has or shall acquire that do not already belong to any other government. For it would be a direct contradiction, for anyone to enter into Society with others for the securing and regulating of property: And yet to suppose his Land whose Property is to be regulated by the Laws of the Society should be exempt from the jurisdiction of the Government ... By the same Act therefore whereby anyone unites his Person which was before free, to any Commonwealth; by the same he unites his Possessions, which were before free, to it also; and they become, both of them, Person and Possessions subject to the Government and Dominion of that Commonwealth as long as it hath a being.
(TT 2:120)

According to Gale's interpretation, Locke implies in this passage ownership of persons' possessions by the state⁹⁶. There is, in short, a transfer of ownership from the individual to the state so that the state becomes the new owner of what the individual possesses on entering civil society, and of any goods he might acquire at a later date. This interpretation of transfer of ownership seems incorrect. Locke clearly links property and persons; both are treated alike on entering civil society - "both of them, Person and Possessions" become "subject to the Government and Dominion of the Commonwealth". It is doubtful whether Locke would want to say, or indeed could say, that the state (commonwealth) comes to own persons for ultimately persons are God's property. If people do not own themselves, they cannot transfer ownership of themselves to any other person or body for "nobody can give more power (i.e. right) than he has himself"⁹⁷. Men cannot alienate rights they do not possess. Thus, if whatever happens to persons on entering civil society is the same as what happens to property it is surely not transfer of ownership. Now, each one has the right to use (control, direct, and manage) his person (and property), to determine the course his life will take, but within the bounds of the Law of Nature. Thus, the jurisdiction or dominion that government acquires when men enter civil society would appear to be what eighteenth-century philosophers call eminent dominion - the power to regulate (the extent of) the rights to property and liberty. Eminent dominion does not imply ownership of persons or possessions. Ownership, of course, entails dominion, but dominion does not entail ownership⁹⁸.

This interpretation is supported by what Locke says at TT 2:57:

Each one has a Liberty to dispose and order, as he lists, his Person, Actions and Possessions, and his Whole Property (but) within the Allowance of those Laws under which he is.
(My italics)

In other words, the individual's rights to liberty and property - his rights to control, direct, and manage his life and property - are limited or regulated by "those (civil) Laws under which he is".

It is the job of government in civil society to regulate property (the right to property) according to the "Common Good"⁹⁹. If a government does this, there "cannot be an incroachment upon anybody since no government can have a right tending to any other end". "Whatsoever alterations" it makes (to the right of property) that promote that end or even merely "tend to that end" are morally legitimate, even obligatory. "Those only are incroachments which hinder the publick good"¹⁰⁰.

But whose good is included in this "publick good"? Is it perhaps the good of the Bourgeoisie, of just one group of men rather than of each and every member of society? What Locke says clearly runs counter to this interpretation:

The end of Civil Society is Civil peace and prosperity or the preservation of the Society and every member thereof in a free and peaceful enjoyment of all the good things of this life that belong to each of them. (My italics)^{101a}

And:

The magistrate should make use of that power which was given him only for the preservation of all his subjects, and every particular person amongst them.^{101b}

(He) shall be accountable for his laws and administration as a magistrate, according as they are intended to the good, preservation and quiet of all his subjects in this world as much as possible; which is a rule so certain and so clear that he can scarce err in it unless he do it wilfully.^{102a}

In fact, Locke argues that the good of one man or group of men cannot be considered apart from the good of all; for men's interests in Civil Society are interwoven. "In Civil Society", he writes, "one man's good is involved and complicated with another's"^{102b}.

We have just seen in the quotes above that Locke argues that it is the job of Civil Society to (i) preserve society and (ii) to preserve each man. The fact that the ends of Natural Law and Civil Society coincide is not an accident at all; a Civil Society that is moral always acts in accordance with Natural Law.

In the State of Nature, men have rights that are correlative to

obligations of Natural Law. In addition to having these rights, each man also possesses the moral power to enforce his rights. "In the State of Nature", Locke says, "everyone has the Executive Power of the Law of Nature"¹⁰³. He has the power to preserve his person, his liberty and his property, and, further, he has the power to punish transgressors of the Law of Nature. When men move into Civil Society they give up this moral power they previously had to enforce their rights and punish transgressors of the Law of Nature. They "quit this Natural Power" and "resign it up into the hands of the Community in all cases"¹⁰⁴. In Civil Society men give up "all their natural powers to the Society"¹⁰⁵. This move to Civil Society is not forced upon them; it is done only with men's consent. "It is nothing but the consent of any number of Freemen capable of a majority to unite and incorporate into such a Society"¹⁰⁶.

The reason why men consent to leave the State of Nature and form a Civil Society is that property in the State of Nature becomes very unsafe and very insecure. In the early stages of the State of Nature when land is plentiful and men have not given their tacit consent to the use of money, property is safe and secure. It is not an age of covetousness, ambition and self-seeking. These features and the contentiousness that accompanies them appear, as we have seen, with the introduction of money. The problem is that men are biased in their judgements and their self-seeking leads them to judge in their own favour. But the position is not hopeless for God has provided a solution to the problem. "God hath certainly appointed government to restrain the partiality and violence of men"¹⁰⁷.

The important point is that when men move into Civil Society they give up the Power they formerly had to enforce the Law of Nature and the Natural Rights associated with it; what they do not give up is either the Law of Nature itself or their Natural Rights.

The obligations of the Law of Nature do not cease in Civil Society:

The obligations of the Law of Nature cease not in Society, but only in many cases are drawn closer, and have by Humane Laws known penalties annexed to them, to enforce their observation. Thus the Law of Nature stands as an Eternal Rule to all Men. No Humane Sanction can be good or valid against it. (TT 2:135, 25-32)

And:

Municipal Laws of Countries ... are only so far right, as

they are founded on the Law of Nature, by which they are to be regulated and interpreted. (TT 2:12)

Neither do the rights cease in Civil Society:

For no Man or Society of Men, having a Power to deliver up their Preservation or consequently the means of it to the Absolute will ... of another. ... They will always have a Right to preserve what they have not a Power to part with and to rid themselves of those who invade this Fundamental, Sacred and unalterable Law of Self-Preservation for which they entered into Society. (TT 2:149, 18-25)

Men do not have the power (right) to part with their lives for their lives are not their own; as God's workmanship, they belong to God. Men may morally use their lives only for the ends that God sanctions. The right a man has to his preservation and hence to the means to it is "fundamental, sacred and unalterable". It is the job of the government in Civil Society to aim "to save all". Preservation is something "to which even the meanest have a title"¹⁰⁸.

A good Civil Society is one that acts in accordance with the ends of Natural Law and respects men's rights. In the discussion on Natural Rights no answer was given to the question as to whether there are any positive rights in Locke's theory, (that is, rights to be given goods) or whether all the rights are negative. This is the question to which we now turn. The point is that if there are any positive rights in the State of Nature (such as the right to be given what one needs for the preservation of one's life) then such a right will also have a place in Civil Society which we have just argued retains the same goals and the same rights as existed in the preceding State of Nature¹⁰⁹.

5.2 Welfare Rights

Dunn writes:

The fulcrum of Macpherson's (and also Strauss's) position is an interpretation of the role of justice in Locke's theory. The purpose of the theory is claimed to be the justification and protection of Bourgeois property rights and the freeing of these from the constraints of traditional Natural Law theory, more specifically from the duty of charity. This operation is effected by the reduction of the concept of justice, the key term in the evaluation of human social existence, to the guarantee of property rights, embodied in positive law and secured by the constitutional apparatus of the modern Bourgeois state. Human duty which used to be a construct out of the needs of all men becomes

merely a construct of the legally-articulated power of private capital. The virtue of charity which used to be a constituent of justice is covertly elided or explicitly rejected. Men confront each other as discrete organisms, incapable of sympathy, and devoid of moral claims upon each other, united merely by the utility of their social division of labour in the 'joyless quest for joy'.¹¹⁰

Macpherson's idea is that in Locke's theory, the individual's right to appropriate "overrides any moral claims of the society. The traditional view that property and labour were social functions and that the ownership of property involved social obligations is thereby undermined". The new Capitalist system caters only for the interests of the propertied classes and ignores the interests of the needy. The needy have no right or title to a share in the surplus goods of the wealthy as they formerly had when charity "was a constituent of justice". This Natural Law idea of charity being a constituent of justice and hence something to which a man had right or title is "covertly elided" or "explicitly rejected" in Locke's new Capitalism. The needy are left to reap the benefits of charity in the modern sense of that word. Charity is a purely voluntary contribution on the part of the wealthy. It is never an obligatory contribution on their part; it is something to which no man has a right or title however urgent his needs. If the wealthy are generous enough to donate it, the needy man survives; if it is not given, he dies of starvation. But distribution according to need is no longer a constituent of the principle of justice and men can never be compelled to honour it.

In this connection, Miller makes a distinction between "Conservative justice" and "Ideal or Prosthetic justice". He says:

Sidgwick believed that in our thinking about justice we were inevitably led to contrast Conservative justice, consisting in the recognition and protection of legal and other customary rights, with Ideal justice consisting of principles for changing these rights in accordance with some ideal standard ... Raphael analogously contrasts Conservative justice whose 'object is to preserve an existing order of rights and possessions, or to restore it when breaches have been made' with Prosthetic justice which 'aims at modifying the status quo'.¹¹¹

The notion of conservative justice is usually expressed in the form "To each according to his rights". These rights generally derive from past transactions or established practices. Conservative justice is concerned with the "continuity of a social order over time, and with

ensuring that men's expectations of one another are not disappointed". In contrast, ideal or prosthetic justice aims at "modifying the status quo". It can be modified in various ways. Miller notes that Sidgwick argues for a modification principle of desert ("to each according to his deserts") and Raphael argues for a modification principle of need ("to each according to his needs")¹¹².

Those who argue that Locke is a Capitalist lackey would put him firmly in the "conservative justice" camp. A man is entitled to all his property; his property is his and cannot be taken from him under any circumstances or else it is no property at all. The needs of others are irrelevant to the issue. I shall argue that this is a misreading of Locke. Locke in the typical Natural Law tradition admits need as a "Secondary" principle of justice. Need can create a legitimate title to a share in the surplus goods of another.

Earlier we quoted Locke as saying:

Men also have a Right to their preservation, and consequently to Meat and Drink and other things as Nature affords for their subsistence.

This, of itself, suggests that there are real limits on an individual's (or any group of individuals') property acquisition. For if some man, M, is unable to acquire sufficient meat and drink and such other things necessary for his subsistence, then those who have it, it seems, would have to provide those necessities (or, at least, could not by their acquisition of goods, G, hinder the poor man's possibility of acquiring these goods) otherwise, those who have these goods would be violating the right (according to Locke's account) of those who are unable to appropriate G.

However, it could be argued that the right of which Locke is speaking is not an "entitlement to" anything, but a right of non-interference. Thus nobody can actively prevent M from acquiring P if P is available for acquisition. Thus, if M sets about the task of picking up acorns, he has a right that others do not actually prevent or threaten him as he does so. Although this interpretation is possible, it is clearly not what Locke says in Book One of the Two Treatises in which he attacks the historical entitlement analysis of property put forward by Filmer. The significance of Locke's attack on Filmer will now become clearer.

Filmer, as we saw, claims that God first gave Adam complete sovereignty over the Earth, and that, therefore, all property is eternally subject to the power of Adam's heirs. Adam historically acquired all the land and its future is thus determined by that acquisition; other people can legitimately come to hold property only if they received it as a free gift from Adam's heirs. Thus, after an individual C justly acquires some property, some one else can come to hold that property only if it is legitimately transferred to him by C. But in no case is land ever returned to the community, nor are the needs of the community or any members of it, however urgent and pressing, relevant to the continued holding of that property by C.

The problem is clear. If it were possible for some people, that is, Adam's heirs, to acquire ownership of all the land, access to the land by non-owners, by those who are not Adam's heirs would be contingent upon the consent of the owners. The consequences of such a theory of property rights are indeed very unpalatable as Spencer argues:

Supposing the entire habitable Earth to be ... enclosed, it follows that if landowners have a valid right to its surface, all who are not landowners have no right at all to its surface. Hence such can exist on Earth by sufferance only. They are all trespassers. Save by permission of the owners of the soil, they can have no room for the soles of their feet. Nay, should the others think fit to deny them a resting place, these landless men might equitably be expelled from the Earth altogether.¹¹³

There is thus a fundamental conflict between the absolute right to property and the right to the means of preservation. This conflict was not ignored or cast aside as irrelevant by Locke. Quite the contrary. In the First Treatise he directly considers and challenges Filmer's claim that Adam and his heirs have a right to all property. He asks: "How will it appear that property in land gives a man power over the life of another, or how will the possession even of the whole Earth give anyone arbitrary authority over the persons of men?" His answer is that it cannot legitimately do so. I shall quote Locke's answer in full because philosophers who write about his theory of property generally ignore it¹¹⁴. It is clearly a pity that they should do so as this passage is the only one where Locke discusses the casuistry of an explicit conflict between property rights and the right (and duty) of preservation.

The most specious thing to be said is that he that is Proprietor of the whole World may deny all the rest of mankind food, and so at his pleasure starve them, if they

will not acknowledge his Sovereignty and obey his will. If this were true, it would be a good argument to prove that there never was such property ... (For) it is more reasonable to think that God ... should rather Himself give them all a Right to make use of the food, and raiment and other conveniences of life ... than to make them depend upon the will of a man for their subsistence who should have the power to destroy them all when he pleased, and who being no better than other men, was in succession likelier by want and the dependence of a scanty fortune to tie them to hard service. (TT 1:41, 7-21)

He further argues:

We know that God hath not left one Man so to the Mercy of another, that he may starve him if he please: God the Lord and Father of all, has given no one of his Children such a Property, in his peculiar Portion of the things of this World, but that he has given his needy Brother a Right to the Surplusage of his Goods; so that it cannot justly be denied him, when his pressing wants call for it. And therefore no Man could ever have a just Power over the Life of another, by Right of property in Land or Possessions; since 'twould always be a sin in any Man of Estate, to let his Brother perish for want of affording him Relief out of his Plenty. As Justice gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so Charity gives every Man a Title to so much out of another's plenty, as will keep him from extream want, where he has no means to subsist otherwise; and a Man can no more justly make use of another's necessity, to force him to become his Vassal ... than he that has more strength can seize upon a weaker, master him to his Obedience, and with a Dagger at his throat offer him Death or Slavery. (TT 1:42)

In this passage Locke clearly says that what a man needs for the preservation of his life "cannot justly be denied him", that he has a "Right to the Surplusage of (the wealthy man's) goods, and "a Title to so much out of another's Plenty as will keep him from extream want". However, he also says that supplying another man's needs is an act of charity. In the twentieth century this sounds contradictory for we do not speak about a Right or Title to charity, nor do we say that certain goods cannot justly be denied a man and at the same time say it is a duty of charity to supply the goods. The contradiction is in fact only apparent not real. Dunn writes:

The crucial test for this interpretation must be the status of charity. Medieval conceptions of property rights made them in functional basis, contingent on the performance of social duties, preeminently the duty of charity. Charity was a right on the part of the needy, and a duty on the part of the wealthy. Such it remained for Locke. (My italics)¹¹⁵

Dunn also notes that the distinction between charity and justice was not

so clear-cut as it is to-day, for "clarity was a constituent of justice"¹¹⁶. Goods necessary for one's preservation are goods to which one has a Right or Title; they cannot justly be denied one. Clearly, Locke must argue that goods which are necessary for a man's preservation are goods to which he has a Right or Title, for, without such a Right or Title, the poor man's preservation would be contingent on the generosity or benevolence of the wealthy men - which was the thrust of his criticism of Filmer's theory.

It could be argued that the Right or Title that Locke acknowledges is not a "Welfare Right": it is not a positive right to receive or be given (for example by society) anything whatever - it is not, in short, a positive in rem right to aid. Rather it is an active, negative right, a right to do certain sorts of things, in particular, to seize, to utilize, to consume those goods which are absolutely indispensable for one's preservation, and to do so even if the goods are owned and the owner does not consent provided there is no other way of obtaining the necessary goods. While this is a possible interpretation, it is clearly not what Locke says. Locke does not say in these passages that the prosperous man is merely required not to prohibit another from taking his goods if he needs them for survival, but that the property owner is morally required to give relief to the needs of another person. He must "afford him Relief out of his Plenty". As we shall see, if the wealthy man refuses to "afford him Relief out of his Plenty" the poor man would be entitled to do certain sorts of things such as utilise and consume the goods which were indispensable for his survival - for if he were not justified in doing so, he would surely die. And "this would be good argument to prove that there never was such property".

The man's need thus creates a title in the goods of another. Even if the man of property refuses to "afford him relief" and the poor man is forced to seize his wants, his act cannot be described as robbery, for he is merely exercising his moral claim right not to be excluded from preservation. This limitation on the right of ownership is not merely an ad hoc device on Locke's part to "soften" the worst effects of his Capitalist theory. Rather the exception is motivated by the very same consideration that gives rise to the rule on property acquisition. Locke who has derived the right of appropriation from the right of a

man to his preservation argues that a man cannot effectively preserve himself if his very survival is contingent upon the consent of another person. Although this argument is found in the First Treatise, I believe it is quite consistent with what he says in the Second Treatise.

For Men being all the Workmanship of one Omnipotent and infinitely wise Maker, All the servants of one sovereign Master, sent into the World by his order and about his business, they are his Property, whose Workmanship they are, made to last during his, and not another's Pleasure (TT 2:6, 10-14, my italics)

It is in Filmer's account, but not in Locke's, that a man's existence becomes contingent upon the consent of other men; the poor man in Filmer's account exists during the pleasure of another man. But in Locke's theory no man may exist at the pleasure of another man, for each man is the property of God and is never the property of other men. If a man had no right or title to that which he needed for his preservation, then he would be totally dependent on the gifts of other men; he would exist at their pleasure. If, on the other hand, he has a right or title, his position is different. If those with wealth refuse to "afford him the relief" which is his due according to the fundamental Law of Nature, he would be entitled to enforce his right himself by taking that which he needed. In so doing he would commit no wrong; his act would not be robbery. In the State of Nature, as we have seen, each man has the executive power of the Law of Nature; he has the power to enforce his rights, and this would include, of course, the power to enforce his moral claim right not to be excluded from preservation. When he moves into Civil Society, he hands over this executive power to the Civil Society. He does not, of course, renounce the Law of Nature or the rights associated with it for "the obligations of the Law of Nature cease not in society", they are an "eternal rule to all men". "The Law of preservation" as "the fundamental, sacred, and unalterable law" cannot be cast aside. It becomes the job of civil government to enforce it by Civil Law. From this we may conclude that although the needy man loses power he formerly had to enforce his right to preservation, the enforcement of his right becomes the task of Civil Society. Its civil laws must coincide with the Law of Nature; the good Civil Society must aim at the same goals and respect the same rights as had existed in the State of Nature. It must aim for the good of society and all its members, and this must include those in need. Indeed, Locke puts this point very clearly:

Only common charity (i.e. justice) teaches that those should be most taken ^{care} of by the law (i.e. civil law) who are least capable of taking care for themselves.¹¹⁷

The civil law must "take care of those least able to take care for themselves" first by redistribution of wealth - transferring some of the "surplusage" of the wealthy to them, and secondly, by introducing appropriate economic policies. Legislation of economic matters, and intervention in trade is necessary to ensure "the good and preservation" of all subjects. For example, an artificial lowering of the rate of interest by the state is at times necessary to prevent economic hardship among the poor and necessitous and to prevent their exploitation and oppression by men of wealth. It is necessary, he says, to prevent "young men and those in want" from being "too easily exposed to extortion and oppression". Men of capital, "in particular, must not be permitted to take advantage of the ignorance and necessity of borrowers"¹¹⁸. Such state intervention, Locke argues, helps to break up those large accumulations of capital which result in hardship and oppression to the poor and needy¹¹⁹.

That Locke should argue that a poor man should have his needs supplied by others who are more fortunate than he, that he should have his "food", "raiment" and "conveniences of life" given to him by others and that government should introduce economic policies aimed to prevent hardship may come as a surprise to those who see Locke as a Capitalist lackey, as an apologist for laissez-faire Capitalism, as the philosopher who provided the moral justification for unlimited accumulation and the absolute right to property. I have tried to show the importance to Locke's theory of Natural Law, especially of the fundamental Law of Nature, to preserve mankind and the right associated with it. It is a feature of Natural Law theory that need is included as a subsidiary principle of "justice". David Miller writes:

Although justice was predominantly identified in the minds of medieval Christian writers with the protection of legally established rights, secondary recognition was given to the claims of need. Here the doctrine that by natural law all property was originally held in common became of practical importance. Because God had in the beginning given the Earth to all men to enjoy in common, it followed first, that no one had a right to take for himself more than he needed, and, second, that a man had only a right to take that of which he made good use. A distinction was drawn between necessities and superfluities ... Superfluities were the goods which a man possessed over and above this accepted standard of living. It was a matter of justice that superfluous goods should be given to those in need, whereas if a

man gave away his own necessities to another this was an act of charity or mercy.¹²⁰

The latter as an act of "real" charity or mercy was, of course, not enforceable. But the former was enforceable. If the man of wealth failed to give some of his superfluous goods to those in need, "the man in need was entitled to avail himself of another's property"¹²¹.

Miller quotes Aquinas:

It is not theft, properly speaking, to take secretly and use another's property in a case of extreme need; because that which he takes for the support of his life becomes his own property by reason of that need.¹²²

Pufendorf's analysis is similar:

Further such is the force of Propriety that the Proprietor has a Right of delivering his own goods with his own Hands; even such as he is oblig'd to give others. Whence it follows that when one Man has anything owing from another, he is not presently to seize on it at a venture, but ought to apply himself to the Owner, desiring to receive it from his Disposal. Yet in case the other Party refuse thus to make good his Obligation, the Power and Privilege of Propriety does not reach so far as that the things may not be taken away without the Owner's Consent, either by the Authority of the Magistrate in Civil Communities or in a State of Nature by violence and Hostile force. And though in regard to bare Natural Rights, for a Man to relieve another in Extremity with his goods, for which he hath not so much occasion, be a duty obliging only imperfectly, and not in the manner of a debt since it arises wholly from the Virtue of Humanity; yet there seems to be no reason why by the additional Force of Civil Ordinance, it may not be turned into a strict and perfect Obligation.^{123a}

And Cumberland writes

That necessities ... be allowed to all without violation, that is, that they become their properties, at least for the time they continue necessary to them, whence they are called their rights (iura)^{123b}

In Natural Law, there is no clear-cut distinction between charity and Justice. Charity is, as Dunn says, a constituent of justice. Natural Law philosophers argue that, in the State of Nature the needy man has a right or title to be given or to take that which he needs and when he does so he does not commit a robbery. According to Aquinas the needy man may "take secretly and use another's property". According to Pufendorf, if the wealthy man refuses "to make good his obligation", his superfluous goods may be taken away without his consent anyway either by the needy man himself or by another person acting on his behalf. Finally Locke argues that the wealthy man must "afford him relief" for this relief is something to which the poor man has "Right

or Title", "it cannot justly be denied him". Moreover, Natural Law philosophers such as Locke and Pufendorf argue that once Civil Society is introduced, Civil Law becomes the appropriate vehicle for satisfying the rights of the needy.

Barry argues that statements of the form "A needs X" are incomplete and must be filled out in the form "A needs X in order to do (or be) Y"¹²⁴. Locke writes that "we are in an estate, the necessities whereof call for a constant supply of meat, drink, cloathing, and defence from the weather; and our conveniences demand yet a great deal more"^{125a}. Thus, according to Locke's theory, (and the theories of other Natural Law philosophers) the statement may be filled out as: "A needs a constant supply of meat (sustenance), drink, cloathing, shelter and firing (firewood) in order to be preserved (to have continued existence in the World)"^{125b}. Clearly, the end for which these goods are required in Natural Law theory is a very basic one and it would be regarded as totally inadequate by many theories of justice in the twentieth century. Miller, for example, suggests that what a man needs are all those goods that are necessary for the realisation of his "plan of life"¹²⁶. Clearly, many more goods and resources are necessary for the "realisation of a plan of life" than are necessary for simple preservation. Yet the fact remains that Locke's theory, in admitting need as a principle of justice, as something that "cannot justly be denied one", may be clearly distinguished from purely laissez-faire theories. Locke's theory admits an element of Ideal or Prosthetic justice for it allows some modification of the status quo in favour of those who lack what they need for preservation. This Prosthetic or Ideal element of need could not, of course, have been an essential part of his theory of property if, as Macpherson argues, Locke had based his theory of property on the absolute right of a man to the property of his person. Apart from the fact that Locke never speaks of "absolute" rights - the word is Macpherson's - Locke's theory of property is really based on the fundamental obligation and right to preserve mankind. Gough writes:

Locke did not found the complete right of property solely upon this 'property' which each man has in his own person. Its real foundation is the Law of Nature which 'willeth the peace and preservation of mankind'.¹²⁷

FOOTNOTES: LOCKE'S THEORY OF PROPERTY

1. Bedau, Hugo "The Right to Life" in The Monist vol.52, 1968, p.565.
2. Peffer, Rodney "A Defense of Rights to Well-being", in Philosophy and Public Affairs, vol.8(1), 1978, p.67.
3. Ibid.p.65
4. Von Leyden, Wolfgang "John Locke and Natural Law", in Philosophy, vol.31, 1956, p.25.
5. TT 1:26, 3-4; TT 1:41, 12-17; TT 2:26, 3-4.
6. ELN 153, 5-12.
7. ELN 157.
8. ELN 157.
9. ELN 157.
10. ELN 157.
11. ELN 157.
12. Yolton, John "Locke on the Law of Nature", in Philosophical Review, vol.67, 1958, p.489.
13. ELN 187.
14. TT 2:6, 10-14.
15. ELN 185.
16. ELN 157.
17. A Holy Commonwealth, or Political Aphorisms upon the True Principles of Government. 3:28.
18. ELN 117.
19. ELN 117; ELN 157.
20. ELN 113.
21. TT 2:135, 30-32.
22. TT 2:16, 9-10.
23. TT 1:86, 4-9.
24. TT 2:6, 10-22.
25. TT 1:86, 19-24.
"For the desire, strong desire of Preserving his Life and Being having been planted in him, as a Principle of Action by God himself, Reason, which was the voice of God in him, could not but teach him and assure him, that pursuing that Natural inclination

he had to preserve his Being, he followed the will of his Maker".

26. TT 2:149, 20-22. "Yet he has not liberty to destroy himself".
TT 2:6, 4-5.
27. TT 2:159, 15-17.
28. TT 2:77, 2-5 and ELN 157-158.
TT 2:11, 15 and TT 2:220, 6.
29. Dunn, John "Justice and the Interpretation of Locke's
Political Theory", in Political Studies, vol.16, 1968, p.71.
30. TT 2:220, 6.
31. TT 2:10, 1-5.
32. ELN 159.
33. Lazlett, Peter "Introduction" to Locke's Two Treatises of Govern-
ment, edited by Peter Lazlett, p.92.
34. Ibid. p.92.
35. Ibid. p.93.
36. TT 1:52, 3-4.
37. Schochet, Gordon Patriarchalism in Political Thought.
Introduction.
38. TT 1:52, 14-15.
39. TT 1:54, 10.
40. TT 1:54, 10-14.
41. Lazlett, Peter "Introduction" to Locke's Two Treatises, p.93.
42. Von Leyden, Wolfgang "Introduction" to John Locke's Essays on
the Law of Nature.
43. TT 2:4, 3.
44. TT 2:4, 7.
45. TT 2:6, 2-3.
46. TT 2:4, 5.
47. This argument is rather suspect insofar as it amounts to an
inference from a factual assertion (of the equality of men) to
a normative assertion (that no one ought to harm another in
certain respects).
48. TT 2:8, 17-18; TT 2:11, 15.
49. TT 2:6, 19; TT 2:11, 13 cf. ELN 173, 181.
50. TT 2:172, 26-27; TT 2:25, 1-4.

51. TT 2:16; TT 2:17.
52. Lamprecht, P. The Moral and Political Philosophy of John Locke, p.122.
53. Raphael, D.D. "Human Rights" in P.A.S., Suppl. 39, July 1956, p.209.
54. Ibid. p.209.
55. Ibid. p.212. William Wainwright also argues that, for Locke, rights amount to obligations on others. In "Natural Rights", American Philosophical Quarterly, vol.4, 1967, p.81, and Benn and Peters similarly write in Social Principles and the Democratic State that "for Locke, the State of Nature was already a social state, governed by the Law of Nature, from which Natural Rights are derived. He is able to postulate such rights because he also postulates a Law of Nature binding on all men and imposing corresponding duties on them".
56. The distinction between "mandatory" and "discretionary" claim rights is drawn by Joel Feinberg in "Voluntary Euthanasia" in Rights, Justice and the Bounds of Liberty, pp.232-233.
57. TT 2:6, 4-5; TT 2:149, 20-22. "Yet he has not liberty to destroy himself."
58. TT 1:30, 3-5.
59. See also TT 1:40, 5-7.
"Tis nothing but the giving to Man, the whole Species of Man, as the chief inhabitant, who is the Image of his Maker, the Dominion over the other Creatures."
and
TT 1:97, 1-3
From what I have said, I think it is clear that a Right to the use of the Creatures, being founded Originally in the Right a man has to subsist and enjoy the Conveniences of Life.
and
TT 1:26, 3-4.
The Earth and all that is therein, is given to Men for the support and comfort of their Being.
60. DJN (De Jure Naturae) Book 4 Ch.4 sect.5.
61. DJN Book 4 Ch.4 sect.5.
62. Filmer, Robert Observations upon H. Grotius' 'De Jure Belli et Pacis' (Ed. P. Lazlett) p.273.
63. TT 2:28, 15.
64. Day, J.P. "Locke on Property" in Philosophical Quarterly, vol.16, 1966, p.208.
65. Ibid. p.208.
66. Becker, Lawrence Property Rights, p.19. Becker's account of "full" or "liberal ownership" is derived from Honoré's.

67. Olivecrona, Karl "Locke's Theory of Appropriation", in Philosophical Quarterly, vol.24, p.221 and p.223.
68. Nozick, Robert A.S.U., p.174.
69. Becker, Lawrence op. cit., p.37
70. Ibid. p.37.
71. Ibid. p.37.
72. Day, J.P. op. cit., pp.208-9.
73. Becker, Lawrence, op. cit., p.40.
74. Spencer, Herbert Social Statics, pp.133-134.
75. TT 2:27, 12-13.
76. Alan Ryan's summary of Macpherson's position. From Ryan, Alan "Locke and the Dictatorship of the Bourgeoisie", in Political Studies, 1965, pp.210-211.

It should be noted that Macpherson's interpretation of Locke's position is very similar to that outlined by Marx. Marx characterises Locke as a man who

"championed the new Bourgeoisie in every way - he took the side of the manufacturers against the working classes and paupers, the merchants against the old fashioned users, the financial aristocracy against governments that were in debt: he even demonstrated in a separate work that the Bourgeoisie way of thinking is the normal human way of thinking".

Contributions to the Critique of Political Economy. New York: International Publishers, 1970, p.77.

Macpherson's interpretation is also similar to that of Paschal Larkin. Larkin argues in Property in the Eighteenth Century with Special Reference to England and Locke (1930) that Locke sided with the prosperous against the poor and weak and rejected the Medieval idea (found especially in Aquinas) that moral and social obligations corresponded to property ownership.

Locke's "theory", Larkin writes, "opens the road to the evils arising from the cupidity of enclosing landlords and unscrupulous employers" (p.79). "The main purpose which the State of Nature serves in Locke's hands is to rationalise the facts and tendencies of property in his time" (p.79).

In respect of the moral and social obligations of property ownership, Larkin notes: "The absence of any reference to the moral obligations of ownership and the emphasis laid on individual right rather than on social purpose in his theory present a striking contrast to the ideas" of his predecessors (p.2). "The duties of property and the responsibilities of ownership (especially relief of the needy) were thrust into the background. Accordingly, his theory appears ethically inferior to that of his predecessors" such as St Thomas Aquinas (p.79).

Macpherson similarly argues that Locke's "absolute property" right "overrides any moral claims of the society". His theory "under-

mines" the "traditional view that property and labour were social functions and that ownership of property involved social obligations" (Possessive Individualism, p.221).

It can be seen that Macpherson's interpretation is neither uncommon nor new.

77. Alan Ryan, op. cit., pp.210-11.
78. Macpherson, C.B. Political Theory of Possessive Individualism, p.221.
79. TT 2:34, 5; TT 2:27, 12.
80. Locke continues (in the same work): The plight of landlords issues from "their debauchery and luxury beyond means". "If the landed gentleman", he adds, "will have and by his example make it fashionable to have more claret, spice and silk ... money must follow to balance the account and pay the debt", or he will sink. (Consid. Int. Money p.115. See also pp.26-27)
81. ELN p.207.
82. ELN p.209.
83. TT 2:34, 6.
84. Works, IV, p.60.
85. Of the Conduct of the Understanding, in Works (1768) vol.IV, p.155. Cited in John Dunn, The Political Thought of John Locke, C.U.P., 1969, pp.253-54.
86. TT 2:36, 33-37.
87. TT 2:50, 11.
88. Alan Ryan op. cit., p.224. Locke is very clear on this point; see TT 2:108, 3-5.
89. See TT 1:86, 19-28. Locke argues that men's wants and desires were limited to self-preservation which was God's will for man anyway - the Fundamental Law of Nature.
90. TT 2:111, 9-12.
91. TT 2:49, 4-5.
92. TT 2:50, 2-5.
93. TT 2:35, 11-19.
94. TT 2:35, 3-4.
95. TT 2:50, 15-16 and TT 2:120, 7-8.
96. Gale, George "John Locke on Territoriality", in Political Theory, vol.1(4), 1974, pp.475-476.
97. TT 2:23.

98. TT 1:39.
99. TT 2:131, 20-21 "And all this to be directed to no other end, but the Peace, Safety and publick good of the People". and TT 2:135, 19-20 "Their Power is limited to the publick good of the Society." and TT 2:137, 3-4 "For all the Power the Government has ... being only for the good of the Society." and TT 2:131, 9-10 "The power of the Society ... can never be suppos'd to extend farther than the Common good."
100. TT 2:163.
- 101a. Lord King. The Life of John Locke, 1830, vol.2, p.109.
- 101b. John Locke Essay on Toleration (1667) in Bourne, H.R. Fox, The Life of John Locke, vol.1, p.180.
- 102a. Ibid. p.179.
- 102b. Lord King op. cit., vol.2, p.114.
103. TT 2:13, 1-2.
104. TT 2:87, 12-15.
105. TT 2:136, 19-20.
106. TT 2:99, 8-11.
107. TT 2:13, 6-8.
108. John Locke Essay on Toleration, op. cit, p.185.
109. Locke is clear that the obligations and rights that existed in the State of Nature are continued in Civil Society. This must be so because they are "eternal" and "unalterable". But it is also the case than men would not desire to give up any of their rights. A man enters Civil Society "only with an intention the better to preserve himself ... for no rational Creature can be supposed to change his condition with an ~~intention~~ intention to be worse". (TT 2:131, 1-7).
110. Dunn, J. "Justice and the Interpretation of Locke's Political Theory" in Political Studies, vol.16, 1968, p.71.
111. Miller, David Social Justice, pp.25-26.
112. Ibid. p.27.
113. Spencer, Herbert Social Statics pp.114-115.
114. Exceptions are:
Held, Virginia "John Locke on Robert Nozick" in Social Research, 1976, p.169.
Tully, James - Discourse on Property: John Locke and His Adversaries, C.U.P., 1980.

115. Dunn, J. op. cit., p.81.
116. Ibid. p.71.
117. Some Considerations on the Consequences of Lowering the Interest and Raising the Value of Money, by John Locke. London: Printed for Awnsham and John Churchill at the Black Swan, Pater-Noster Row, 1692, p.13.
118. Ibid. pp.101-102.
119. According to Parry (who sees Locke as a representative classical liberal philosopher), the citizens in Lockean society have agreed to be ruled by general laws, but have "not agreed to any particular policy objective whether of an economic, moral or religious nature, and thus government itself can have none". In Some Considerations, Locke clearly shows that he believes government must have economic (and social) policy objectives. The question of religious policy objectives is beyond the scope of this thesis, but Locke does appear to believe that government should have such objectives. Locke discusses these in his "Essay on Toleration", in Bourne, H.R. Fox, op. cit., especially p.187. Parry, Geraint. John Locke, 1978, pp.116-121.
120. Miller, David op. cit., pp.278-279.
121. Ibid. p.279.
122. Ibid. p.279.
- 123a. Pufendorf S. De Jure Naturae Book 2, Chapter 6, Section 5.
- 123b. Cumberland, Richard DLN, 7.8.
124. Discussed in: Miller, David op. cit., p.126.
- 125a. Lord King op. cit., vol.1, p.162.
- 125b. In Locke's Report of the Board of Trade to the Lords Justices, 1697, he writes (p.110, Note H), "Everyone must have meat, drink, cloathing and firing". "Meat" should be interpreted as "food". The need for shelter is mentioned elsewhere in the document.

Where individuals are unable to work to supply themselves with these necessary needs of nature, they must be supplied for them by others.

Where the amount of earnings falls short of the minimum estimated necessary for the purchase of these necessities, the difference should be made up by the parish.
"What their earnings come short of full maintenance should be supplied out of the labour of others, that is, out of the parish allowance". (p.110, Note H).
126. Miller, David op. cit., p.133.
127. Gough, J.W. John Locke's Political Philosophy, 1950, pp.77-78.

CHAPTER TWO

HUME'S THEORY OF PROPERTY

Introduction

From Heaven to Earth;

From the Law of Nature to the Laws of Human Nature

Locke, Aiken notes, is "rightly regarded as the father of British Empiricism, for his Essay Concerning Human Understanding stands as a landmark in the progress towards a scientific conception of knowledge"¹. But, as we have seen, Locke does not apply this Empiricism to all areas of study. His ethical and social philosophy is clearly within the framework of the rationalistic Medieval tradition. This blend of rationalistic and empiricist elements in Locke's philosophy while apparently quite acceptable to him was much less acceptable to his successors. Hume was among those who accepted the empiricism of Newton and Locke while rejecting the rationalism of Locke's moral and social world. For Hume this also meant rejection of Locke's theory of Natural Law and property.

The alternative theory which Hume puts forward is the subject of this chapter. However, it is necessary to preface this positive account with a brief summary of his empiricist views of religion and causality, as his views on these subjects are central to his rejection of the theory of Natural Law, and hence of the natural right to property. This section will make clear why Hume's theory of property assumes the form it does - why it is firmly rooted in Earth and not in Heaven, in the Laws of Human Nature and not in the Law of Nature, and in men's desires and inclinations and not in God's will and purposes for men.

We saw that Locke's account of property is firmly anchored in the Natural Law which is the expression of the will of a purposeful creator. The world was created for a purpose; man as part of that world was also created for a purpose. The creator is also a law-maker; man standing in a relation of created to creator has certain duties to his creator. Men can infer their obligations. "What is to be done by us can be gathered from the end in view of all things"².

It is this idea of a final cause, of "an end in view of all things" that Hume rejects. The significance of Hume's analysis of causality for the theory of Natural Law is stated very explicitly. He says:

That all causes are of the same kind, and that in particular there is no foundation for that distinction which we sometimes make betwixt efficient causes, and causes sine qua non; or betwixt efficient causes and formal, and material, and exemplary, and final causes.³

According to Hume's analysis of causality in which every cause must be prior in time and contiguous in space to its effects, there can be no acceptance of material, formal and final causes which do not always precede their effects in the way Hume demands. All causes for Hume must be efficient causes. The only causal necessity that Hume acknowledges is efficiency and this idea of efficiency is derived from experience of the constant conjunction of two objects. We come to believe in a causal relation, Hume argues, only when we observe, and only insofar as we observe, such constant conjunction. His denial of any other type of causality other than that of efficiency is a break with an older tradition which maintained a four-fold order of causality. Hume's denial of final causes, in particular, is an attack on the conception of a purposefully ordered nature, and the doctrine of ends in ethics - "an end in view of all things", as Locke puts it. As such, his denial of final causes is an attack on the doctrine of Natural Law. Hume's opposition to the doctrine of final causes and of ends in ethics is firmly stated in a letter he wrote to Francis Hutcheson:

I cannot agree with your sense of natural. T'is founded on final causes; which is a consideration that appears to me pretty uncertain and unphilosophical. For pray, what is the end of man? Is he created for happiness or virtue? For this life or the next? For himself or for his maker? Your definition of natural depends on solving these questions which are endless.⁴

Hume also employs his analysis of causality in his critique of natural religion which he discusses at length in the Enquiry Concerning Human Understanding, and in the Dialogues Concerning Natural Religion. He argues that we can establish a causal relation only when we observe, and insofar as we observe, constant conjunction. But we cannot observe God at all, and natural phenomena remain what they are whatever explanatory hypothesis we adopt. "I very much doubt whether it be possible for a cause to be known only by its effects"⁵. The religious hypothesis is, indeed, one way of accounting for the visible phenomena of the universe; and it may be true, even though its truth is uncertain. At the same time, it is not a hypothesis from which we

can deduce any facts other than those which we already know. Nor can we derive from it principles and maxims of conduct. In this sense it is a "useless" hypothesis.

It is useless because our knowledge of this cause being derived from the course of nature, we can never, according to the rules of just reasoning, return back from the cause with any new inference, or, making additions to the common and experienced course of nature, establish any new principles of conduct and behaviour.⁶

The idea that no norms of human conduct, either ethical or political, can be inferred from the religious hypothesis is put even more forcefully by Hume a few pages before:

All the philosophy in the world, and all the religion which is nothing but a species of philosophy, will never be able to carry us beyond the usual course of experience, or give us measure of conduct and behaviour different from those furnished by reflections on common life. No new fact can be inferred from the religious hypothesis; no event foreseen or foretold; no reward or punishment expected or dreaded, beyond what is already known by practice and observation ... nor have the political interests of society any connection with the philosophical disputes concerning metaphysics and religion.⁷

It is this idea that no norms of human conduct, neither ethical nor political, can be inferred from the religious hypothesis that has the greatest implications for the doctrine of Natural Law. Throughout its long life-time that doctrine has served as a philosophical foundation for social, political and ethical theory. Where employed, it was generally accepted that it had both a private dimension and a social and political dimension. The social and political dimension was of great importance. Nowhere is this more clearly seen than in the theory of Locke. Natural Law is premised as a key foundation of all moral and social theory and activity. It is of fundamental importance both in the State of Nature and in Civil Society which succeeds it. From it are derived all men's rights and duties including the right to own property. We saw how the philosophical foundations of the institution of property lay completely in Natural Law. Hume's account is thus intended to strike at the heart of the theory of Natural Law. He leaves religion bereft of any supernatural content. He leaves only an account of the approximate origin of the natural world. There is no explanation of the relationship of man and his moral and social world to God and the order of the world. The theological is bracketed off. All considerations of God and of

final causes in moral and social affairs are rejected. Hume severs all links between theology, such as it is, and human and social affairs. The atmosphere is one of fundamental secularism⁸.

It is clear that once this severance between theology and human and social affairs is effected, all the principles of conduct, and all social and moral institutions must be explained without recourse to God and Natural Law. Hume must produce a moral and social theory that owes nothing to the principles of authentic Natural Law, and nothing at all to the less than simple aspect of man's relationship to God.

We are now in a position to turn to Hume's theory of property. We shall see that his arguments are thoroughly purged of all references to, or assumptions explained in terms of, Natural Law. Hume's explanation of the conditions necessary for the institution of Property, and his arguments for the particular principles and rules of property are wholly and consistently secular⁹.

We shall see that the institution of property is explained and justified not by reference to God and Natural Law, but by reference to the desires, inclinations and needs of men, by reference to a set of related facts about men and nature. That this is so is not surprising. Once God and Natural Law have been removed from the picture, we are left with the world as we see and know it, and with men as we see and know them. Men must be considered as autonomous beings in that they are independent and not subject to a superior authority and will. Being autonomous, they choose their own institutions, and frame their own principles of conduct, and they do this in accordance with their own needs and natures, rather than in accordance with the dictates of a divine will. It is sufficient that such institutions and principles of conduct are appropriate to their natures, to their desires and needs, and to the material conditions of the world. We shall see that it is a central theme in Hume's account that social institutions such as that of property take shape in contexts where men, in virtue of their basic conditions, have or develop needs for these institutions. Institutions arise so as to fulfil certain needs, and they thus have utility and value to men. They are totally dependent on men's needs and interests, that is, on men's natures, and on the material conditions that exist in the world.

1. Hume's Account of Men's Need for the Institution of Property

We have just stated that Hume's central theme is that social institutions arise because men have, or develop, needs for them, in virtue of their needs and inclinations, and of the material conditions in the world. What then are these material conditions, and these needs and inclinations that make the institution of property so necessary to men?

For Hume, the nature of the human condition is such that it is only when men mutually participate in society that they can expect to achieve a reasonable level of well-being. Man, according to Hume, of all creatures has received from the hand of nature the most modest endowments in proportion to his wants and needs¹⁰. His physical powers are scarcely sufficient for survival in an unfriendly world; the food for his sustenance requires the hardest labour to be produced, and, physically, he has neither protection against the elements, nor strength and agility for his defence. To this catalogue of natural handicaps, we must add yet another: man has a prodigious number of desires, requiring for his wellbeing a great variety of goods, while the world and his abilities are such that he can satisfy only a small fraction of them. There is, in short, an imbalance between what he needs and desires and what he is able to obtain. Too weak alone to be successful in any major project, too limited in skill, too distracted by the diversity of his needs to perfect himself in any art, man in the solitary state is inevitably doomed to "misery and ruin"¹¹.

T'is by society alone he (man) is able to supply his defects, and raise himself up to an equality with his fellow creatures, and even acquire superiority over them.¹²

The advantage of society is that it provides a remedy for the three great inconveniences with which man in the natural state would be burdened: physical weakness, limited skill, and insecurity of person¹³. Society provides a remedy for the first inconvenience by a sheer conjunction of force and numbers. While one man may have a problem removing a boulder from his field, a few hundred working together can clear scores of them.

The second inconvenience is overcome in society by a division of labour. Many of the commodities we need require complex skills for their

production, skills that take years of effort to perfect. It follows that if every man is forced to be a jack-of-all trades, he will never become sufficiently proficient at any particular endeavour and many of his wants will go unfulfilled. Society, on the other hand, provides a large reservoir of skills and services which the individual can employ in exchange for services in which he himself excels. Thus the availability of a large number of goods and services is one important advantage derived from society.

The third advantage which Hume lists is security against "fortune and accident"¹⁴. This security is not to be confused with the security of possessions which results once the institution of property is established. Security of possession (which we shall discuss shortly) is more properly a condition of society, than a result of it, for without it, society in any real sense is impossible. The kind of security to which Hume is referring now is that which derives from "mutual succour" or the practice of rendering mutual aid in times of need. An example would be the security every villager enjoys in knowing that if some natural disaster like a flood were to occur, all the other villagers would help even if they themselves were not so badly affected. Thus, social organisation makes men less subject to the potentially devastating powers of nature.

Hence, according to Hume, men establish society in order to remedy their several environmental difficulties; by a conjunction of forces to augment power¹⁵, by a division of labour to increase productivity¹⁶, and by mutual concern to prevent dangers and accidents¹⁷. This is not to say, as Hume is quick to observe, that men in their "rude condition" have sufficient insight to perceive the advantages of a complex and sophisticated society¹⁸. The basic socialising motive for Hume does not result from abstract reflection on the advantages to be derived from increasing one's force, ability and security, but from an original instinct, shared by man with the whole animal kingdom, to perpetuate the species. The ultimate basis of sociality is not rational, but grounded in our passions. Beginning with the attraction between the sexes, and the development of concern for children, small societal units naturally arise which make men

sensible of the advantages which they may reap from society, as well as fashion them by degrees for it, by rubbing off those rough corners and untoward affections which prevent their coalition.¹⁹

The family which counts as an all important micro-society for Hume thus provides the context in which the idea of social life arises. Hume believes that society gradually evolved from the family unit through the clan and tribe to form extensive society, and that at each successive stage of development there was an increasing awareness on the part of at least some members that certain ends were promoted by this new relationship. In this way, it became possible for men to see the value of social life, and to have a motivation to form larger and more advantageous social units.

But where does the institution of property fit in? Hume's argument thus far has only shown that in order to enjoy a reasonable level of well-being, men must live in society. What then is the connection between property and society? Why do men need the institution of property? Hume's answer to this question may be summarised as follows:

Human well-being depends upon societal organisation.
Societal organisation depends upon the institution of property
Therefore, human well-being depends upon the institution of
property.

We have just looked at Hume's arguments for the first premiss. We have seen why it is the case that individuals can achieve a reasonable level of well-being only when they live in societies. We must now turn to Hume's second premiss. Why is it the case that a society cannot exist without the institution of property?

In discussing Hume's arguments for the first premiss, we mentioned the advantages to be derived from societal organisation. However, equal to, or even surpassing these advantages, are certain natural impediments that stand in its way. Hume does not have in mind impediments that have been eliminated or set aside at some remote time in the past from which extensive society can be dated. Rather he has in mind continuous and ever-present impediments in the form of certain natural qualities of human nature and the world. These impediments can never be completely eliminated by the social institutions that men set up, but they can be controlled and contained. The impediments may be divided into two classes: (1) the psychological qualities of human nature, and (2) the physical nature of the world and its objects. Hume refers to these as the internal and external impediments to society, or the impediments arising out of "our natural temper and outward circumstances"²⁰.

The impediments of "natural temper" that Hume has in mind are those of selfishness and greed. He holds that every human being has a selfish element in his nature, and this universal selfishness manifests itself in an insatiable avidity for acquiring goods for himself, his family, and friends.²¹ It is important to note that Hume does not claim that men are wholly selfish; he does allow that they have a desire to promote the well-being of their families and friends as well²². Yet their selfishness is sufficient to present a serious obstacle to the formation and continuance of society and this is because it manifests itself in an insatiable desire to amass the goods and resources of the external environment.

The natural environment provides men with the means for well-being in the form of goods which serve their needs and interests. It is possible to imagine circumstances under which even wholly selfish men might live together in a society unregulated by rules of property. This would be the case in a mythical Golden Age in which "Nature spontaneously produc'd her greatest delicacies in infinite quantities"²³. Under such conditions of natural abundance, men could freely appropriate as much as they wished, and there would still be more than enough for others. But, unfortunately, the world is not in a Golden Age, but in an age of scarcity, and this state of affairs, coupled with man's selfish nature is sufficient to constitute a serious obstacle to the formation and continuance of society. These impediments of "our natural temper" and "outward circumstances" are not those of some remote and distant age. They are ever-present. Men's natures do not change - they are inherently selfish and greedy, and external goods remain in short supply. There is, in short, an imbalance between the goods available and what men desire. Conflict is inevitable²⁴.

Every man, Hume believes, will attempt to satisfy his desire for goods, and since the supply of goods is limited, the success of some will be at the expense of others. However, as this desire is equally strong in all men, and since, according to Hume, all men are basically equal in strength and ability²⁵, the success of one man will only be temporary - it will last only until other men find a way of taking his possessions away from him. The natural equality of uncivilised man rules out any long-term domination of some men by others. The

result is that there would be a complete instability of possessions, and possibly of life as well, for every man will be pitted against every other man in ceaseless competition and conflict. Such competition and conflict is neither eliminated nor reduced by the "limited benevolence" that characterises men's natures, for it is clear that men may quarrel over goods that they desire for their families and friends just as much as they may quarrel over goods they desire for personal use. Conflict is still inevitable. It is important to note that, for Hume, the evil is not the acquisition of goods as such, but the form this acquisition of goods takes. What is wrong is that the acquisition is completely unregulated and unprincipled. As long as human nature retains its selfishness and goods remain scarce, and as long as there is no system of property, the endless competition resulting will produce an inherently unstable state of affairs²⁶. The acquisition of goods must be regulated if society is to exist.

The scarcity of goods is thus one impediment to society. The other impediment is their quality of being "transferable without loss"²⁷ from one person to another. There are, indeed, other human goods besides material possessions as Hume points out. There are "the external advantages of the body" and "the internal satisfaction of the mind"²⁸ and, clearly, health, strength, good looks and intelligence are also scarce, and, indeed, as much wanted by people who lack them as any material goods. However, the goods of the mind and body do not threaten the stability of society because they are not "transferable without loss". Hume notes:

We are perfectly secure in the enjoyment of the first (the goods of the body), and although the second (the satisfaction of the mind) may be ravish'd from us, it can be of no advantage to him who deprives us.²⁹

It is only the goods of "industry and good fortune" that are "exposed to the violence of others and may be transferred without suffering any loss or alteration". It is only external goods that can have the same value for their new possessor as they did for the old one.

Thus, in Hume's analysis, it is only these external or material goods that threaten society since it is only in relation to such goods that vicious behaviour can be advantageous to him who indulges in it. Hume assumes that a man may behave viciously and maliciously towards another if that other has superior or more plentiful possessions. He does not believe that such behaviour would be manifested merely on

account of superior intelligence or unusually good looks. The principal occasion for discord and conflict is the moveable nature of external goods. Thus, what is required to escape from the State of Nature is a convention or system of principles and rules which stabilises and fixes the possession of external goods. External goods must be assigned or fixed to persons thus creating a situation in which men are as secure in the enjoyment of these goods as they are secure in the enjoyment of the goods of the mind and body which, Hume believes, could never be the source of contention and discord. Thus, what is needed is a system of mine and thine by reference to which disagreements over who is to have what can be settled without recourse to force and violence. What is needed is "a convention for the stability of possession, and for mutual restraint and forbearance".

Such a system of mine and thine, that is, a system of property rights, is not merely one way in which discord and contention can be avoided: it is an indispensible condition for avoiding the situation. Such a system is "absolutely requisite both to the support of society and to the well-being of every individual"³⁰. Without some system for assigning and fixing possessions, "society must immediately dissolve, and everyone must fall into that savage and solitary condition, which is infinitely worse than the worst situation that can possibly be suppos'd in society"³¹.

For Hume, then, social institutions like that of property arise and take shape where men have, or develop needs for them. There is an intimate connection between men's natures, the material conditions of the world, and the kind of institutions which arise given these facts and conditions. More specifically, we may say that, for Hume, property relations are an adjustment to a conflict between two basic aspects of the human condition, namely, the natural necessity of men and their natural avidity and contentiousness. It is clear that Hume is offering an explanation of the origin of property in terms of these facts and conditions. But, it is important to note that Hume is also offering a justification of that institution too - a justification for its existence in past ages, as well as a justification for its continued existence³². The internal and external impediments to society have not disappeared over the centuries. Men remain selfish and greedy, and desired goods remain in short supply. Hume's

statement that without some system for fixing possessions "society must immediately dissolve, and everyone must fall into that savage and solitary condition which is infinitely worse than the worst situation that can possibly be suppos'd in society" thus has current application too. Hume is saying that the institution of property is always vital to human social life - it is an indispensable condition for it provided limited sympathies and scarcity will always endure. It is so fundamental to social life that savagery and chaos would result without it. If it is the case that the institution of property is necessary for the avoidance of savagery and chaos, there would seem to be little need for justification beyond this point. Only a "thoroughgoing moral skeptic", Becker argues, would require justification of such a statement³³.

Now that we have examined in some detail Hume's arguments for the institution of property, some comment and criticism would be appropriate. It is clear that central to Hume's arguments for property is the idea of man's innate greed and selfishness. It is man's anti-social qualities of selfishness and "insatiable avidity" that make the institution so vital to men. If men's natures were characterised by "extensive benevolence", that is, if "every man had the utmost tenderness for every (other) man, and felt no more concern for his own interests than for that of his fellows"³⁴, the institution of property would serve no useful end.

Why should I bind another by deed or promise to do me any good office, when I know that he is already prompted by the strongest inclination to seek my happiness ... Why raise landmarks between my neighbours field and mine, when my heart has made no division between our interests; but shares all his joys and sorrows with the same force and vivacity as if originally my own?³⁵

Hume's answer is that if men's natures were characterised by such benevolence, there would be no point in binding others by deeds and promises, or raising landmarks between fields. The institution of property would have no purpose or value. But how can we know that Hume's assumption that men are innately greedy and self-seeking is true? If it were not, it might seem that the second premiss and conclusion of Hume's argument are in trouble. We may recall that Hume's argument is as follows:

Human well-being depends upon societal organisation
Societal organisation depends upon the institution of property
Therefore, human well-being depends upon the institution of property.

If men were not self-seeking and greedy in the way Hume asserts, it might be that societal organisation does not depend at all upon the institution of property, and that, therefore, human well-being does not depend upon it either.

Some philosophers like to distinguish between men's innate qualities and the kind of qualities they develop and exhibit when they live in particular kinds of social systems. They argue that claims that human beings are selfish and greedy are true about men, not as they are naturally and fundamentally, but as they appear in one specific type of socio-economic conditions, that is, in full market societies. Hume, as we saw, argues that there is an essential connection between institutions and the satisfaction of human needs and desires. Social institutions arise so as to satisfy such needs and desires. Other philosophers have argued for a two-way relationship between institutions and men's needs and desires. They agree with Hume that institutions arise so as to fulfil needs and desires, but they also argue that such institutions, when fully established, can function so as to mould and shape those needs and desires, perhaps even creating desires that did not exist before. On this account, then, it becomes less clear that "insatiable avidity" is an inherent characteristic of men. Such philosophers argue that Hume assumes as natural and eternal the very qualities that were in fact created by the institutions of property and market society. Marx, perhaps, is one of the first to argue that institutions can mould and shape men's natures in this way, but elements of the idea can be traced back to Locke. For Locke, greed and selfishness are not innate characteristics of men. In the Golden Age before money was introduced into the State of Nature men had limited and moderate desires. The introduction of money changed all this; it made men greedy for goods that far exceeded their needs, and it made them further "contentious" and "quarrelsome".

Critics could thus point out that Hume is employing contentious or unproven claims about men's innate qualities in his argument for property. But, if it were the case that men were not so greedy and avid as Hume argues, or, if we were to assume that this were the case, where would this leave his argument for property? Would it collapse? Would the institution be redundant? Hume, as we saw, assumes that it would be so, that extensive benevolence would make

property redundant and, thus, valueless. But surely Hume is wrong. It is clear that men's intentions to use goods and resources from the natural environment can conflict even if their natures were characterised by extensive benevolence and moderate desires. That this is so is clear from the following case:

A and B are two farmers in a peaceful and amicable State of Nature. Their habits are different. A cultivates his field in the morning and goes fishing in the afternoon. B fishes in the morning and cultivates his field in the afternoon. Quite unwittingly they have chosen the same field or area of land for cultivation, but they do not know this because there is no "landmark" or sign to show occupation and use. (Being benevolent such a practice is never used. Landmarks are only necessary when "their hearts have made a division of interests"). A cultivates the field with crop x, and B with crop y. But crops x and y need tending in different ways. What is advantageous to one is detrimental to the other. The problem is that A and B are unwittingly destroying each other's crops. After six months they discover the mistake. Being benevolent A says, "You have the bigger share of whatever grows. I will take just my needs". But the equally benevolent B says, "No. We'll do just the opposite". The problem is that as they have destroyed each other's work, nothing grows at all. Each has no goods with which to be benevolent. Thus, there must be

rules excluding persons generally other than the "owners" from taking or using material things. If crops are to grow, land must be secure from indiscriminate entry, and food must in the intervals between its growth or capture or consumption, be secure from being taken from others. At all times and places, life itself depends on these minimal forbearances.^{36a}

Hart thus argues that some form of property institution is inseparably connected with human life and well-being. Property rules are vital - even if men are extensively benevolent and have moderate desires. I said earlier that if the contentious claims about men's greed and selfishness are dropped, it might appear that Hume's second premiss and conclusion are in trouble. It should now be clear that this would not be so. Although Hume did not see it, he could have justified the institution of property using less contentious claims. He could still say that "Human well-being depends upon the institution

of property". However, one important qualification must be made. The type of property institution necessary to men if they are assumed to be potentially extensively benevolent is very different from the one necessary to men if they are assumed to be inherently selfish and greedy. If men are assumed to be benevolent, a few "minimal forbearances" should suffice. But if men are "insatiably avid" and contentious, it would take more than minimal forbearances to ensure that society does not collapse. The kind of extensive individual control over property that Hume attempts to justify does indeed require the assumption of avidity and selfishness. Hume's pessimism is a topic to which we shall return in Section 4. It is enough to note at this stage that greed and selfishness do not have to be assumed in order to show that the institution of property is necessary to men. Extensive benevolence and moderate desires do not make the institution redundant and valueless.

2. Self-interest and Mutual Agreement

Now that we have completed this digression concerning the relationship between benevolence and property, we must return to the main discussion. We saw that Hume's argument is as follows: The principal occasion of discord and conflict is the moveable nature of external goods. Thus what is required to escape from the State of Nature is a convention or system of rules and principles which stabilise or fix the possession of external goods, assigning them to particular individuals. What is required is a system of "mine and thine" by reference to which disagreements concerning who is to have what can be settled without recourse to violence.

Such a system of "mine and thine", of property rights, is not simply one way in which discord and conflict can be avoided. It is an indispensable condition for its avoidance. Hume is very clear on this point. Such a system, he says, is "absolutely requisite both to the support of society, and to the well-being of every individual". Without such a system of assigning and fixing possessions "society must immediately dissolve, and everyone must fall into that savage and solitary condition which is infinitely worse than the worst situation that can be suppos'd in society"^{36b}.

The words, "well-being of every individual" and "everyone must fall into that savage condition" without such a convention, are most important. Hume is not saying that it is better for the majority of people if a system of property rights is implemented; he is saying that it is better for each and every individual that such a system be implemented. "Every individual person must find himself a gainer on balancing the account"^{36c}. The distinction is crucial. Gauthier writes:

Hume is frequently interpreted as a proto-utilitarian. (But) the utilitarian considers overall well-being a sufficient condition for the conventions of property. The contractarian considers the well-being of every individual a necessary condition for such conventions ... A utilitarian will consider a property convention acceptable if there is some feasible set of circumstances in which it affords the group a total utility greater than the total utility of any circumstances attainable in its absence. A contractarian, on the other hand, will consider a property convention only acceptable if there is some feasible set of circumstances in which it affords each member of the group no less utility, and some members more utility than is afforded either by the existing circumstances, or than by any other set of circumstances voluntarily attainable in the absence of any property convention. A sufficient condition of utilitarian acceptability is that a convention maximises total utility; a necessary condition of contractarian acceptability is that a convention increases the utility of some, and decreases the utility of none.³⁷

Hume's approach is thus clearly contractarian, not utilitarian. Moreover, his contractarian claim is a very strong one - the property convention increases the well-being of every individual and decreases that of none.

Hume is clearly thinking of the "well-being of every individual". It is true that he sometimes uses the words "public utility", but this, Gauthier says, is not "overall utility", but rather "mutual expected utility". "Hume is not appealing to total utility as would a utilitarian, but rather to mutual advantage as befits a contractarian"³⁸. The reason is clear enough. According to Hume, as we saw, all men have only limited benevolence. They are equal in strength and ability and thus not able to dominate each other in the long-term. A self-interested (or limitedly benevolent) individual, equal in strength and ability to his fellow men, would clearly not agree to have his personal (or family) interests submerged in an overall good. The argument that, although he and his family will not benefit from

an agreement, others - complete strangers - will benefit, would carry no weight with him. Before making an agreement in respect of external goods, he will want to know how it affects him and his family. If complete strangers fare well, but he will fare badly, he would not agree to it. Having said that all men are self-interested and equal in native strength, Hume must mean mutual advantage and not overall advantage.

We have just said that a self-interested individual would not enter into a convention or agreement that had the effect of leaving him worse off than he would have been if he had not entered into it. It would not be "rational" for him to do so. An individual who is rational in a self-interested sense would choose to maximise expected utility or expectation of well-being³⁹. It would be rational for a particular individual to assent to a principle, or set of principles, P, (assuming for the moment that there is only one such P) if and only if his expectation of well-being is greater ^{than} (or equal to) his expectation of well-being given that no agreement at all is reached between himself and the rest of the group. It would be irrational (in this self-interested sense) for him to accept less than he can expect to get if no agreement is reached. The individual's expectation of well-being given that no agreement is reached stands as a reference point against which to judge and measure various principles and rules. The absence of agreement point for Hume is, of course, the State of Nature.

This criterion of rational individual choice can be expanded to mutual agreement or choice in the following way:

- (1) Mutual agreement on the adoption of principle, (or set of principles), P, is rational iff every man's expectation of well-being given the adoption of P, is greater than, or equal to, expectation of well-being given that no agreement is reached.

In the games theory language of "dominance" this could be reformulated as follows (where AA stands for Absence of Agreement, or the State of Nature for Hume)⁴⁰:

- (1a) Mutual agreement on the adoption of principle, (or set of principles), P, is rational iff P dominates AA.

The emphasis is still on individual well-being. One principle, or set of principles, does not dominate another principle, or set of principles if it makes the majority in a group better off. P only

dominates AA (or the State of Nature) if it is the case that every man's expectation of well-being is greater when P is adopted than when no agreement is reached⁴¹.

Applying Formula (1a) to Hume's account, we can say that, for Hume, a society based upon a system of property rights will dominate the State of Nature, and any form of social co-operation that lacks a system of property rights will be dominated by a form of social co-operation that has such a system. This is because any social system that lacks such property rights will be inherently unstable. The conflict and discord which results from the absence of property rights will ensure that no society endures for any length of time. It is, therefore, clearly in the rational self-interest of men to agree to a system of property rights. "Every individual person", Hume writes, "must find himself a gainer on balancing the account". Gauthier writes:

Hume's argument, then, is that the expected benefit to each person, of a system of property, in comparison with no system, is very great, so that each has a strong interest in reaching an agreement with his fellows on some system.⁴²

We have seen that rational mutual choice is choice which maximises expectation of well-being for each and every person. There is a further condition which we can add to Formula (1). We can say that mutual agreement to adopt P_1 is rational only if there is not some other principle which yields a still greater expectation of well-being to each and every person. We can formulate this as follows:

- (2) Mutual agreement to adopt principle (or set of principles), P_1 , is rational iff it is not the case that there is another principle (or set of principles), P_2 , which is expected to yield each and every person a greater amount of well-being.

Again, we can reformulate this in the games theory language of "dominance". If P_1 yields a greater expectation of well-being for every man than does P_2 , we can say P_1 dominates P_2 . So:

- (2a) Mutual agreement on the adoption of principle (or set of principles), P_1 , is rational iff P_1 dominates AA (or the State of Nature) and there is no other principle (or set of principles), P_2 , which dominates P_1 .

No problem arises if there is only one principle (or set of principles), P, which dominates the State of Nature. Clearly, P must be chosen.

There is also no problem if there are two principles (or sets of principles), P_1 and P_2 , and it is the case that P_1 dominates P_2 which in turn dominates the State of Nature. Clearly, P_1 must be chosen by self-interested individuals.

But suppose there are a number of principles (or sets of principles) which clearly dominate the State of Nature, the state of absence of agreement, but none of which clearly dominate the others. There can be no uniquely rational solution if it is the case that P_1 , P_2 , and P_3 all dominate the State of Nature, but P_1 does not dominate P_2 or P_3 ; P_2 does not dominate P_1 or P_3 ; and P_3 does not dominate P_1 or P_2 . It would not be rational to leave matters at the absence of agreement point, the State of Nature, for this would simply be agreeing to accept a lower standard of well-being than is necessary.

As we shall see, it is just this type of situation that we encounter in Hume's theory. Hume's convention or system of property is constituted by a set of principles and rules. The principles, he argues, are clearly in the rational self-interest of all individuals in the society. If they are accepted and adhered to, "each individual must find himself a gainer on balancing the account". One of these principles is that "possessions be stable". But possessions can only be stable if they are firmly fixed or assigned to individuals. Thus the principle must be backed or supported by a set of rules which assign or distribute these possessions to individual persons. On the question of these rules, Hume writes:

We must distinguish between the necessity of a separation and constancy in men's possessions, and the rules, which assign particular objects to particular persons. The first necessity is obvious, strong and invincible: the latter may depend on a public utility more light and frivolous, on the sentiment of private humanity and aversion to private hardship, on precedents, analogies, and very fine connections and turns of the imagination.⁴³

Thus, Miller notes that, for Hume, "what is most important is that there should be some rules ensuring the stability of possessions; exactly what form these rules take is less important"⁴⁴. But we can clarify Hume's position even further. If the rules are rules "which assign (or distribute) particular objects to particular persons, and, if it is the case that it is of no great significance which rules are adopted, then, it must be the case that it is of no great significance which particular objects are assigned or distributed to

particular persons. Hume does in fact argue that this is the case:

That there be a separation or distinction of possessions, and that this separation be steady and constant; this is absolutely required by the interests of society, and hence the origin of justice and property. What possessions are assigned to particular persons; this is, generally speaking, pretty indifferent; and is often determined by very frivolous views and considerations.⁴⁵ (My italics)

We shall examine the idea that it is of no great significance which rule of distribution or assignment of possessions is adopted in Section 4. At the moment we shall just continue to analyse Hume's views.

We can say that, according to Hume, the dominance criterion fails to yield the uniquely rational and determinate solution, but men must still reach a consensus on some rules. Gauthier says that, for Hume,

The solution is acceptance of the "most obvious rule" which could be agreed on! What is obvious turns on "connections of the imagination" so that the basis for agreement among persons is to be found in that feature which is a member of the set of possible circumstances each of which picks out a particular rule, and which has a stronger effect on the imaginations of those concerned than any other member of this set.⁴⁶

In the absence of a uniquely rational solution, appeal is made to "salience" ("S") which is a co-ordinating device. Gauthier continues:

A rule is required to connect objects as property to persons in situations of type S. Each possible rule appeals to some feature of S. Among these features, we suppose that there is one, f_1 , which establishes a stronger imaginative connection between particular objects and particular persons than any other feature, at least, for most individuals. Each person, then, whether or not he shares this imaginative apprehension, will expect most others to respond to it, and so the feature, f_1 , provides the salient basis for agreement on that rule which appeals to it.⁴⁷

In less technical language, this means that, in the absence of a uniquely rational solution, it is necessary to turn away from a consideration of which rules are rationally dominant to a consideration of what is, in the terms of the laws of the operation of the imagination, psychologically salient. According to Hume, the laws governing the imagination (the principle of association of ideas) are such that men faced with such a choice will naturally tend to focus on certain features, rather than upon others, and they will be led naturally to a consensus.

In the next section we shall see how this rational dominance and psychological salience apply to Hume's principles and rules of property.

3. The Principles and Rules of Property

Hume finds that there are three principles which promote the conditions of human well-being, and which are, therefore, in the rational self-interest of men to acknowledge in their dealings with each other. These are: (1) The Principle of Stability of Possessions, (2) The Principle of Transference of Property by Consent, and (3) The Principle of Performance of Promises⁴⁸.

(1) THE PRINCIPLE OF STABILITY OF POSSESSIONS

The first and most important principle is that possessions be stable. This principle compensates for one of the greatest natural obstacles to society, which, as we have seen, is the transferability of possessions without loss or alteration. By means of this principle, loose, external, material goods are made as secure as the goods of the body and mind which Hume believes are never the source of social strife. The adoption of such a principle is the only possible solution to man's natural situation, a situation in which selfish people live in a world in which essential goods are scarce and transferable without loss. Men cannot be made generous; goods cannot be produced in infinite quantities, but circumstances can be created in which goods will be regarded as if they were not loose and transferable.

This first principle, in fact, creates "property". Without this convention of property, and without this principle, only "possessions" exist. The distinction between "possessions" and "property" is very significant in Hume's theory. A man may occupy a plot of land left to him by his father. He may clear it, and labour on it to make it productive, and, further, other men may allow him to enjoy it in peace. But this land is still only a "possession". It is not "property". It becomes "property" only when other men recognise that he has a right to enjoy the land in peace, and when they further recognise that they have a duty of restraint and forbearance⁴⁹, that

is, that they must not interfere with that man's enjoyment of his land. And, of course, such rights and duties arise from the convention; they do not pre-date it. They are not natural rights; they are not God-given. They are adopted by men simply on account of their promotion of human well-being.

The convention, Hume says is for "stability of possession and for mutual restraint and forbearance". His idea is that stability of possession can only be ensured if there is a duty on the part of others (the non-owners) not to trespass or interfere. The rights and corresponding duties to which the convention gives rise are thus negative or classic rights. A man's right to property correlates with a negative duty on the part of others - the duty not to trespass or interfere with that to which the rightholder has a right (in this case, his property)⁵⁰.

The convention thus creates "property"; it also creates "justice". Gauthier points out that, in Hume's account, the two concepts are "closely linked". For Hume,

Property is determined by a system of rules for the possession and use of objects, so that my property is what, in accordance with the rules, I possess and use, and my exclusive property, what I alone possess and use.

Justice, then, is the virtue determined by such a system, so that just behaviour consists in adhering to the rules governing the possession and use of objects. For Hume, a theory of property and justice explicates the rationale for systems of rules determining possession and use.⁵¹

We can thus say that a man behaves justly towards another when he fulfils his duty of restraint and forbearance, that is, when he leaves that other to enjoy his possessions in peace. By so doing he is implicitly acknowledging that that other has a right to the goods in question.

The first principle thus creates "property" by making possessions stable. But, taken by itself, it will fail to achieve its purpose which is "to cut off all occasion of discord and contention" for it is pitched at too general and abstract a level. In addition, there must be other supplementary rules defining the conditions under which possessions are to be stable. These supplementary rules are called by Hume the "Rules Determining Property".

The Rules Determining Property

We have seen that, for Hume, it is in the rational self-interest of all men to agree to some system of assigning property rights. However, the calculus of rational self-interest takes us to this point, but no further. If we ask what rules should be adopted, Hume is ready to offer an answer, but he makes it clear that that answer cannot be defended by appeal to considerations of rational self-interest⁵². What is indispensable to the maintenance and stability of society is that men are willing to act in accordance with rules in their dealings with one another; but the content of these rules is largely a matter of indifference from the point of view of rational self-interest. We find that it is not rational self-interest that provides the rationale for the supplementary rules, but the principles of the imagination, that is, the principle of association of ideas. Thus, at this level, psychological salience replaces rational dominance. We shall see that what is psychologically salient owes much to custom and habit.

Hume discusses five separate rules for the determination of property rights. These are: (i) The Rule of Present Possession: or the rule that every man shall retain as property that which he held as mere possession before the agreement. (ii) The Rule of First Possession: or the rule that a person shall have a right to that which he is the first to possess or occupy. (iii) The Rule of Long Possession or Prescription: or the rule that long term de facto possession of property shall be sufficient to establish a right. (iv) The Rule of Accession: or the rule that an object shall be the property of he who already has property in another object intimately related to it. (Thus, the fruits of an orchard, or the offspring of cattle are said to belong to the person who owns the orchard or cattle in question). Finally, (v) The Rule of Succession: or the rule that a man's property shall pass to his nearest family after his death.

(i) The Rule of Present Possession

Hume notes that we can think of men coming to deliberate together for the first time, with no previous background of mutual co-operation in a society, and further, we can think of such men as already in possession of certain external goods at the time of deliberation. The problem is to understand how such external goods which may have been

acquired by force or cunning can suddenly be transformed into rightful property. There is no "rational" way of settling this matter for self-interested reason can only tell us that there should be rules, but not what their content should be. The only way is to find that which is most agreeable or harmonious to the natures of those who must abide by these rules, and it is in this respect, Hume believes, that the Rule of Present Possession has clear advantages. Such advantages arise from various accidental features of the imagination.

It is a fact of human nature or a general disposition of men to prefer goods to which they are accustomed. Clearly, men are more accustomed to goods they already possess than to new goods, so it follows that every man prefers his own goods to any other's. The effect of custom and habit is:

That it not only reconciles us to anything we have long enjoy'd, but even gives us an affection for it, and makes us prefer it to other objects which may be more valuable, but are less known to us. What has long lain under our eye, and has often been employ'd to our advantage, that we are always the most unwilling to part with; but can easily live without possessions we have never enjoy'd, and are not accustomed to.⁵³

It is this natural preference that the Rule of Present Possession gratifies - for each man is to continue to enjoy what he possessed at the time deliberation took place. The only difference is that now it is truly "property" whereas before it was only a possession. A rule that is so clearly in harmony with man's natural dispositions will not be opposed, Hume thinks. But one could, of course, question the claim that such a rule is in harmony with men's natural dispositions at least as Hume perceives them. If men have a greater affection for goods they already possess, and "can easily live without goods they have never enjoy'd", this scarcely demonstrates an "insatiable avidity" and "greed". To be greedy and insatiably avid is to be disposed to want to acquire more goods, not to be content with what one already possesses or to take the view that "what I've never had, I'll never miss". If men can live so easily without goods they have never enjoyed, it seems unclear why there should be such a scramble for goods, and the consequent threat to the stability of society.

(ii) The Rule of First Possession or Occupation

This rule specifies that a man is to have a right to that which he is the first to occupy or possess. It applies to external goods whose existence was not known about before, or which have just been discovered. While it is in the rational self-interest of men that there should be some rule for assigning goods of this type as they will be the source of conflict, rational self-interest cannot tell us what the rule should be. However, Hume argues, the Rule of First Possession naturally suggests itself for "it engages the attention most". We might think that it is reason which informs us of the utility or even the rightness of this rule, but Hume argues, our decision is really made by appeal to principles of the imagination, that is, the association of ideas. We might "reason" on the one hand that a person who hunts down a hare until it drops from exhaustion has a right to the hare - a right that another person does not join the hunt at the last minute and seize the hare. Yet, on the other hand, we are also likely to "reason" that a person who reaches up to pick an apple from a tree has no good grounds to complain if another man reaches up more quickly and picks the apple before the first man can reach it⁵⁴. The difference between the "reasoning" is in fact due to the operation of the imagination, Hume argues^{55a}. There is a stronger association in our imaginations between the idea of the hare and the idea of the hunter, than between the idea of the apple and that of the apple picker. In the hare case there is a causal relation between the two objects: the hunter has chased the hare until it is exhausted. The hunter has caused or produced this state in the hare. But there is no such causal relation between the apple picker and the apple. In accordance with the principles of the imagination, the mind, therefore, moves more naturally from the idea of the hunter to the idea of the hare than it does from the idea of the apple picker to the idea of the apple. The imagination "completes the union" by assigning a property right in the first, case but not in the second case. It should be noted that, for Hume, this relationship of association applies also in cases where no labour is involved. Thus, the first possessor or occupant of a piece of land or an island acquires a title to it. The association in our imagination is very strong in such cases, he claims. The individual "acquires the property" because the "object" (the island, piece of land) is "circumscribed in the fancy"^{55b}.

(iii) The Rule of Long Possession or Prescription

This rule states that wherever the rights of property have become obscure, every man shall have property in whatever he has possessed for a long time. Once the title to property is obscure, contention will arise; it can only be avoided if there is a rule to re-assign the property to somebody. The imagination again functions to determine the rule. Clearly, if it is the case that men become attached to what they actually possess, then it is reasonable to suppose that they will also feel this strong attachment for what they have possessed for a long time. Custom and habit has the effect:

That it not only reconciles us to anything we have long enjoy'd, but even gives us an affection for it, and makes us prefer it to other objects which may be more valuable ... 56

Moreover, the two relations - of long possession and permanent possession are very much alike. The imagination often "conjoins" and even confuses resembling relations so it will naturally tend to conjoin the two relations of permanent possession and long possession. If the imagination assigns a property right or relation in the first case, then it will naturally do so in the second case as well. Clearly a rule that is in harmony with men's natural inclinations will appeal to them, and the Rule of Prescription has this harmony.

Again we can question Hume's insistence that the rule is in harmony with men's natural dispositions. Custom and habit seem again to be at odds with "insatiable avidity" and selfishness. Hume notes that we have "greater affection" for goods we have "long enjoy'd" and that we prefer these to "other objects which may be more valuable". I think it is fair to say that an "insatiably avid" individual would prefer the more valuable goods, and that he would prefer his own goods to other goods only if he felt sure his goods had the greater value.

(iv) The Rule of Accession

This rule assigns to a person goods which are intimately connected with other goods that a person already possesses by right. This rule is based completely on the imagination, according to Hume. There is no question of utility apart from the utility of getting the goods assigned so that they cannot lead to discord.

This source of property can never be explained but from the imagination; and one may affirm that the causes are here unmix'd.⁵⁷

The imagination takes both the natural and existing moral relations as the sign for the determination of a further property right. Thus a man related to an object (for example, an orchard) by both a natural relation of present possession and a moral relation of property, inevitably becomes associated with that orchard in the imagination. But also any part or product (the fruits of that object) also tend to be associated with the object. So the fruit is associated with the orchard. The association is usually based on either a relation of causality or contiguity. If a particular man is associated with a particular object (the orchard) and the object (the orchard) is associated with a particular part or product (the fruit), the man will also tend to be associated with the part or product (the fruit). The imagination just makes the transition to form the new association.

(v) The Rule of Succession

Succession, or the rule that a man's property shall pass to his nearest kin when he dies, differs from the other rules in one significant respect. In the case of the other rules, there is no utility to recommend them; their appeal is not to the understanding, but to the imagination. These other rules have some utility - the utility of getting possessions allocated so that they are no longer the cause of discord, but many kinds of rule could have this kind of utility if strictly enforced. The preference of the rules of First Possession, Long Possession etc. is that they are in harmony with man's nature; they appeal to his imagination. But the Rule of Succession is different. There are important utilitarian reasons served by a rule that requires that property pass to those who are the nearest kin. Such a practice serves to encourage men to be industrious and frugal, and they are, therefore, of more service to society than they would otherwise be. But such a rule, Hume makes clear, is not merely utilitarian. It is reinforced by the operation of the imagination which moves easily from the idea of a person to those who are related to him as children. Such utility as this rule has is thus clearly reinforced by the imagination, that is, by the principle of the association of ideas.

(2) THE PRINCIPLE OF TRANSFERENCE OF PROPERTY BY CONSENT

Hume's analysis moves away from the role of the imagination towards that of rational self-interest again with the Second Principle of Property and Just Social Organisation that possessions be transferable by consent. This second principle is required for the following reason. The First Principle removes one great obstacle to human well-being, but it, in fact, introduces another. The advantage of societal living, as we have seen, is that it gives men an opportunity to satisfy more of their needs than would otherwise be possible. The division of labour which is one outcome of society enables a man to satisfy his multiple needs even though he may know only one skill. Thus a man who specialises in making horse shoes can make them for all the village, and he can buy his bread from someone else who specialises in making bread. But such an exchange of goods or services is only possible if men are able to transfer their possessions with their own consent. The First Principle which lays the foundations of society "fixes" possessions in the sense that it allocates possessions to a particular person according to a number of different criteria. To abolish the First Principle would involve a return to chaos. Thus what is needed is another Principle which will complement the First Principle, but will not undermine it. The Second Principle that possessions be transferable by consent does just this. Hume writes that the Rules and Principles of Property and Just Social Organisation:

Seek a median betwixt a rigid stability and ... changeable and uncertain adjustment. But there is no better median than that obvious one, that possessions and property shall always be stable except where the proprietor consents to bestow them on some other person. This rule can have no ill consequence in occasioning wars and dissensions, since the proprietor's consent, who alone is concerned, is taken along in the alienation; and it serves many good purposes in adjusting property to persons.⁵⁸

Hume argues that while it is essential for the maintenance of society that property be stable, disadvantages would result if men's rights to property were limited to the five Rules for the Determination of Property. These rules do not take heed of the suitability between men and their external goods. If property is allocated in accordance with these rules alone, many will be left holding goods they do not want, or cannot use, and others will lack what they do want or could

use. It is clearly not possible to allow each man just what he wants bearing in mind man's nature, and the scarce supply of goods, but the excessive inflexibility of the five rules can be overcome if there is a principle which specifies that property is to be assigned according to these rules except where a proprietor consents to a transfer of his property to some other party. Moreover, such a principle cannot have the ill consequences of occasioning wars and discord, for it does not frustrate the end that is served by the rules for stabilising property - it allows only as much instability of property as the property owners are willing to sanction. But clearly, the principle is in the general interest, that is, it is in the interests of all the participants. The division of labour (the specialisation of skills) could never function to improve the conditions of human existence without the support of trade and commerce, and trade and commerce could only flourish if there is a rule that allows transference of property by consent⁵⁹.

The relationship between the Five Rules for the determination of property and the Second Principle may be summarised as follows: First, the Five Rules stabilise property, and the Second Principle allows some instability by specifying conditions under which the Rules may be set aside. Secondly, while the Five Rules function to allocate property to someone, the Second Principle functions to allow its reallocation or transfer by detailing the condition (that is, the proprietor's consent) which must obtain for this transfer or alienation to be valid. And this possibility of transfer or alienation becomes necessary once a division of labour is instituted.

(3) THE PRINCIPLE OF PERFORMANCE OF PROMISES

The principle that promises be honoured or fulfilled Hume describes as "one of the most considerable parts"⁶⁰ of just social organisation and property. It is again a self-interestedly rational principle; it owes nothing to the principles of the imagination.

In complex society, promising is indispensable. The Third Principle of Property and Just Social Organisation can be seen as complementary to the Second Principle that possessions be transferable by consent. We have seen that for the division of labour to work effectively there must be some provision for the distribution of surplus goods

and services. The Second Principle in allowing transfer of goods and services by consent accomplishes this purpose, but only to a limited extent because, Hume says:

It can only take place with regard to such objects as are present and individual, but not to such as are absent or general.⁶¹

The transference of property by consent can only take place when the consent and delivery are simultaneous. My mere consent that you should have "five hogshead of wine" without specifying the particular hogsheads in question does not give you property. Similarly, I cannot transfer to you the property in a "house twenty leagues distant"⁶². The same problem occurs with the exchange of services.

I may consent to work for you to-morrow, but as this service is not performed at the moment of consent, you have no assurance that I will do so⁶³.

It is clear that, without promising, transference of property is impossible unless the property in question is actually present and moveable. Services also could only be exchanged if it were possible to perform them at the moment of consent. But, if this were the situation, there would be no confidence and very limited commerce. Each man, knowing that only natural gratitude would prevent his neighbour from taking advantage of him, would be unwilling to risk his property or his labour time on the small chance that his neighbour might show him such natural gratitude. The division of labour, which was instituted to compensate for the limited range of skills each individual possessed, could never succeed without the institution of promising, for each man would be forced to provide for most of his needs alone.

4. The Validity of Hume's Justification of the Principles and Rules of Property

According to Hume, the First Principle "that Possessions be Stable" can only be effective if it is supplemented by rules which assign or distribute possessions to individuals. But, although rational self-interest can inform men that there should be such rules, it cannot tell them which particular rules to adopt. From the point of view of rational self-interest, one rule or set of rules is as good as any

other rule or set of rules. Reason cannot provide the unique solution. To decide among rules; to decide, in short, which individuals are to have which goods, appeal must be made to what is psychologically "salient", to certain associations of ideas that men naturally tend to make. In this way, by means of the device of "salience", men's choices can be co-ordinated.

Gauthier points out that the use of salience to select among possible rules is

Highly conservative in its effects. This conservatism, of course, reflects Hume's insistence that, while a system of property is essential, the choice among systems is of much less importance. In a critical discussion of Hume's theory, we might question whether present possession, inheritance, precedent would command the interested recognition of all concerned.⁶⁴

It is to such a critical discussion that I shall now turn in this section. I shall question whether it is the case that while some rules of property are required, the choice among rules is of little importance. I shall argue that one set of rules is not necessarily as good as another set, and that it is not the case that "what possessions are assigned to particular persons is a matter of indifference".

In Section 4.1, I shall first consider two self-interested individuals in the State of Nature attempting to choose a set of rules to fix property. I shall argue that it is unlikely that they would choose the rules Hume suggests. Then I shall discuss the application of Hume's rules and principles to modern society. I shall be concerned not with the choice of principles and rules - for Hume does not argue that each new generation chooses new principles and rules - but with the more general question of whether they are in the interests of all men, whether which individuals have particular goods is a largely irrelevant matter, and whether all men would abide by Hume's rules and principles. My answers will all be negative.

In Section 4.2, I shall try to show just how conservative are Hume's rules and principles by comparing his theory with Filmer's, and contrasting both theories with the theories of Locke, Hutcheson and Reid. Of key importance in the discussion will be the questions of (i) the

size or extent of each person's property holding and (ii) positive in rem rights to welfare. In respect of (i) I shall attempt to show that the Locke-Hutcheson view of "bounding" or limiting the size of each individual's property is more adequate than the view held by Hume (and Filmer) in which there appears to be no such limit, at all. In respect of (ii) I shall argue that by omitting positive in rem rights to welfare, the lives of some men become contingent upon the consent of other men, and that, therefore, it is implausible to argue:

- (1) that a man whose life is contingent in this way will be "indifferent" to the question of "what possessions are assigned to particular persons" and
- (2) that all rules of property distribution are equally in all men's interests.

Finally, in section 4.3, I shall look at the arguments Hume uses against redistribution of property or wealth, and show that these arguments fail.

4.1 Advantaged and Disadvantaged

Hume argues, as we have seen, that it is psychologically natural for men who seek an agreement on property rights to take their present possessions as a basic reference point. By the Rule of Present Possession each is to retain those external goods over which he exerts de facto control at the time deliberation occurs. But suppose that at the time deliberation occurs, there is considerable disparity between the amount of goods over which different individuals exert de facto control in that some possess a large number of goods, while others possess very few goods. It is clear that there will be some people - those who possess a small number of goods - for whom this natural psychological disposition to accept the Rule of Present Possession will conflict with the self-interestedly rational disposition to maximise well-being. In short, an agreement to change this de facto control into a de jure control is clearly against the interests of those who are relatively disadvantaged. There are clearly alternative rules whose adoption would yield those who are disadvantaged a greater expectation of well-being than the Rule of Present Possession. For the initially disadvantaged the rule that all external goods are to be handed in and redistributed in equal shares to all is clearly preferable to Hume's own rule of Present Possession. It is not clear that self-interested (or limitedly benevolent) men would give their consent

to such a rule if it worked to their (or to their family's) disadvantage. It is more plausible to argue that if such a rule is implemented at all, it is the result, not of consent, but of imposition, that is, that the rule is imposed by the advantaged upon the disadvantaged. But this, of course, is not Hume's theory. We can, therefore, say that it is against the interests of those who are disadvantaged in the sense that they exert de facto control over few goods to allow themselves to follow the promptings of the imagination. Further, there seems to be no good reason why an individual cannot submit what his imagination suggests to him to some sort of rational scrutiny to establish whether or not the rule conflicts with his self-interest. This conflict is, of course, the conflict we mentioned earlier - the conflict between custom and habit and "insatiable avidity".

Even if we allow that the Rule of Present Possession has such a strong imaginative appeal that those seeking to reach an agreement on property rights cannot bring themselves to reject it, it is not clear that they will reach an immediate agreement on this rule, or indeed that they will reach agreement at all. According to the Rule of Present Possession, goods are to be assigned to individuals on the basis of who exerts de facto control over them at the time agreement is reached. Thus, he who has few external goods in de facto control at the time of the agreement will have few of such goods in de jure control. Likewise, he who has a large quantity of external goods in de facto control will have a large quantity of such goods in de jure control. Thus, those who are relatively disadvantaged in respect of goods, if they have any hope of being able to improve their de facto position will want to wait before making an agreement with others. For, if their de facto position improves, their de jure position will likewise be improved. They will, in short, emerge from the agreement on the Rule of Present Possession in a far better position than if they reach immediate agreement on the rule. If the terms of an agreement are likely to be shaped by the relative positions from which the participants negotiate, then some will always be tardy to begin negotiation if they believe that procrastination will give them an opportunity to improve their initial positions. Negotiation can thus be very protracted⁶⁵. Indeed the participants may not reach agreement at all. Suppose that A and B have been warring neighbours in Hume's State of Nature, and have been "stealing" each other's cattle for a long time. Eventually, at time T_1 , they decide to come to some agreement in

respect of the cattle, but their positions are very different. At T_1 , A exerts de facto control over large numbers of cattle, but B exerts de facto control over very small numbers. If A proposes Hume's Rule of Present Possession, B would be disposed to reject it if he believes procrastination would be advantageous. By T_2 , B's waiting game has paid off in that the relative positions of A and B have been reversed. If B now proposes the same rule, A would be disposed to reject it. It might happen that T_3 and T_4 are an exact repetition of T_1 and T_2 . It would seem that agreement on the Present Possession Rule is unlikely to be reached until the negotiating positions of A and B are approximately equal, and that, of course, may never happen.

If we add to the Rule of Present Possession, two other rules Hume suggests - those of Accession and Succession, the general criticism is still valid. According to the Rule of Accession, an object becomes the property of he who already has property in an object intimately related to it. Thus the offspring of cattle belong to the person who owns the cattle in question. If B is relatively disadvantaged in that he exerts de facto control over only a few cattle, it is no more in his interest to assent to the Rule of Accession than it is in his interest to assent to the Rule of Present Possession. Few animals will have only few offspring. If A has ten times the number of animals, his prosperity will grow apace. Over the years the disparity in the property of A and B will become greater. If B sees this situation, he will have every reason to procrastinate an agreement until such time as his position improves. It would not be in his interests to make an immediate agreement.

According to the Rule of Succession, a man's property passes to his nearest kin after his death. If B is relatively disadvantaged in that he exerts de facto control over very few cattle, it is no more in his interest to agree to this Rule of Succession than it is in his interests to agree to the other two rules. The Rule of Present Possession allows for an initial disparity; the Rule of Accession increases this disparity, and the Rule of Succession confirms this great disparity for the new generation. If A and B both have one son each, it is clear that B's son will start life at a substantial disadvantage. It is most unlikely, therefore, that B would agree to these rules. If they suggested themselves to B's imagination, I think he would reject

them. He would submit to rational scrutiny the rules which his imagination suggested to him.

The same arguments would, of course, apply if A and B were conceived to be, not two individuals, but two (limitedly benevolent) families or groups.

Let us now leave our consideration of the State of Nature and turn to that of modern society. The question of choice or agreement over rules and principles is, of course, irrelevant because Hume is not arguing that a new property convention is entered into by each new generation. However, the question of abiding by rules and principles is very relevant. If there is to be security and stability in society, if there is to be general social co-operation, all men must abide by the rules and principles in the sense that they must allow them to govern their fundamental relations with one another. Now men could abide by these rules and principles of property and just social organisation because they see that it is in their 'interests to do so. In this way, their acknowledgement stems from "interested recognition". Alternatively, they could abide by them because custom and habit disposes them to do so. I shall argue that Hume's rules and principles would not command the "interested recognition" of all men for there are some who would be seriously disadvantaged by them. If, then, all men do abide by them, it is more plausible to argue that they do so out of custom and habit than out of interest. Habit and interest again point to different courses of action.

When Hume says that the principles and rules of property and just social organisation are in the interests of all men, he makes an important distinction between what may be called "individual acts of justice" and "the complete system of justice"⁶⁶. A single act of justice, considered by itself, is not only frequently contrary to the immediate interests of the agent, but is also contrary to the immediate interests of society as well. A man may impoverish himself by his own integrity, or do a real disservice to the public interest by restoring a fortune to a seditious bigot⁶⁷. In both cases he would be acting justly, but the immediate consequences would not be useful either to the agent or to the public. The advantages of the principles of property and just social organisation, that is, the ends which such practices are useful in promoting and on the basis of which

they are judged valuable, are derived neither immediately nor directly from individual just acts. I may pay my debts and refrain from stealing, and (if I am poor) I may be unable to point to any advantage in doing these things. It may result in impoverishment and subjection. Hume argues that the advantages lie in maintaining the whole system of rules and practices. "These rules", Hume says, "seek their end in an oblique and indirect manner"⁶⁸. A particular individual's just practices are relevant to the particular advantages he enjoys only insofar as his practices are part of a whole system of practices. And it is this whole system of practices which creates the advantages. Thus, if I pay my debts, I may finish up poorer but payment of debts contributes to a sense of mutual trust in respect of property and this, Hume believes, contributes to my advantage quite as much as to the advantage of others. Equally, if I refrain from stealing, I may have insufficient goods, but mutual forbearance in respect of one another's property helps maintain the very institution that can save me and others from the chaos and conflict of the State of Nature.

Hume thus argues that it is in the long-term interest of all men to adhere to the rules and principles even if their immediate or short-term interest would be better served by infringing the rules and principles. But if people are not to succumb to the lure of immediate advantage, they must be trained to obey the rules and practices of society from a very early stage in their lives. It is in this respect that custom and habit play a vital role in social life. Miller writes:

Custom and habit bear a great deal of weight in Hume's theory. Most just and virtuous acts are performed unreflectively ... simply because the individual has become used to doing acts of this kind ... The habit is inculcated in him by his parents, and strengthened by the effects of education ... Hume's view is the ugly modern word 'socialisation'. Without socialisation from childhood, moral rules would not be followed.⁶⁹

For Hume, custom and habit play a most important role in the lives of all. In highly developed societies, just as in primitive societies, the benefits of observing certain practices or rules is seldom perceived by the majority of people, and is even more seldom taken into account as a motive for action. Habit, custom and education rule men in their daily lives, and it is just by building up such customs in the "tender minds" of children, and by "rubbing off those rough

corners and untoward affections" that the family prepares them for society⁷⁰.

It is important to note that, according to Hume, custom and habit cohere with long-term self-interest. Custom and habit are very powerful influences, but they can only reinforce and further dispose men to do what is already in their interests. Custom and habit lack the power to override self-interest; nothing is strong enough to counter the force of self-interest⁷¹.

I shall now argue that Hume's rules and principles of just social organisation are not in the interests of all men, as he believes; that some people can be so seriously disadvantaged by the basic social system that is defined by these rules and principles that it is implausible to argue that they are in the long-term interests of these people. It may be that custom and habit dispose such people to adhere to them, but then we would have to conclude that custom and habit conflict, rather than cohere, with self-interest.

It is clear that Hume's system of property rights (constituted by the Rules for the Determination of Property, the Principle of Transference by Consent, and the Principle of Performance of Promises) provides the foundations for a basic social system which, if left completely unchecked, tends to work to the advantage of men who possess certain qualities, but to the detriment of others who lack these particular qualities. They are principles and rules which we associate with an open competitive market in which trade and exchange form the basic mode of social interaction. Such a system will tend to favour those who have health, energy and talents, since it is essentially a competitive system. It will tend to favour them in that it will provide them with the greatest opportunities to grow wealthy and prosperous. Conversely, it will tend to be unfavourable to those who lack such advantages. It will also tend to work to the advantage of those who are born into families which are relatively well-off and against those who are not. This is because the Rule of Succession makes possible the accumulation of wealth and power in such a way that there will be significant disparities between the life prospects of those who are subsequently born into such a system. In a social system defined by these rules and principles, the inequalities rather than diminishing (or even remaining static) over the generations

tend to increase and become magnified so that gross disparities of wealth appear. The principle and rules provide no real check on the natural and inevitable drift or tendency for economic power and advantage to accumulate in the hands of some to the detriment of others. It is clear that Hume's principles and rules do no more than fix property, facilitate the operation of a market society, and establish the sanctity of contracts. They do not check the great disparities in the distribution of economic benefits. There will be some men, then, for whom the system of property defined by these rules and principles would be disadvantageous. It would be more in their interests to have a more constrained system, one which offers more protection and one which checks the accumulation of wealth in such a way that their children do not start life at a grave disadvantage.

It seems then that there would be some people whose adherence to these rules and principles would not be based upon "interested recognition". Adherence to contracts, and impartial judges might appear quite irrelevant to people who are disadvantaged by the basic social system. "Conservative" principles of justice, Miller says, "are concerned with ensuring that men's expectations of one another are not disappointed"⁷². But the kind of stability of expectation that arises out of peace, security and order in society is of little interest to those whose stable expectation is one of constant disadvantage.

One could, of course, argue that if, as Hume says, men's actions are largely unreflective and based upon custom and habit, they could adhere to rules and principles that were against their personal and family interests. One would thus be able to explain how some men who are disadvantaged by the basic social system, nevertheless, come to abide by its rules and practices. But this is, clearly, not Hume's theory. Hume believes that custom and habit do cohere with interest. Further he sees no problem in explaining the adherence of all men to the rules and principles he outlines because he believes they are in the interests of all - even the poorest - members of society^{73a}. All men abide by them and encourage their children to do so too because they are in the interests of all men.

In Section 4.1 we have examined Hume's rules and principles to establish whether they would command the "interested recognition" of all

concerned. We found that it was implausible to argue that they would command such "interested recognition". In the case of the imaginary (or historical) people choosing rules to fix property, it was argued that the rules that are supposed to appeal to the imaginations of all would, in fact, conflict with the interests of some and would not, therefore, command their "interested recognition". In the case of contemporary people, it was argued that adherence to the rules and principles by those who are disadvantaged by them is more likely to be motivated by custom and habit than by interest.

In Section 4.2, I shall try to show just how conservative are Hume's Rules and Principles of Property and Just Social Organisation by comparing his theory with that of Filmer, and contrasting both theories with the theories of Locke, Reid and Hutcheson. In 4.2.1, I shall discuss the question of the legitimate size or extent of individuals' property holdings, and in 4.2.2, the question of positive in rem rights to aid.

4.2.1 The Size of Property Holdings

Hume clearly intends that his rule of first possession or occupation should cover ownership by labour for he gives as examples the individual who has a property right in the hare he has hunted and the individual who has a property right in the meadow on which he grazes his cattle. But it is also clear that, for Hume, ownership by occupation can arise even if no labour is expended. Now where occupation does not arise from labour, two major problems arise - the first concerns the size or extent of that which is occupied and the second concerns the use of the resources in question. The skills and efforts of individuals vary to some degree, and if occupation by labour is the criterion there will be some variation in the amount of property held, but this, as Locke points out, will not be very great. The case appears to be very different if property rights may be granted by occupation without labour. Simply by marking out boundaries, one could occupy a vast area, leaving others with insufficient for their needs. Moreover, if land (or any other natural resource) comes to be occupied in this way it may not be used productively. Now Hume admits that there may be disputes concerning the extent of property and he further admits that "the mere view of something" (a mountain

range, for example) is "seldom considered sufficient" to give title, but he never suggests that what a person takes should be limited to what he can make use of, or should be limited in such a way that he does not deprive others of what they need or could fruitfully use. It seems sufficient, for Hume, that "the first discoverer or possessor has the intention of rendering himself the proprietor"^{73b}.

It is, therefore, clear that Hume's theory of property acquisition differs markedly from, and is less adequate than, Locke's. In Hume's theory, there is no proviso to "leave enough and as good in common" for others, and no proviso not to waste. I shall now show briefly that Hume's theory is also very different from, and less adequate than, the theory of property acquisition advanced by his liberal (and natural law) friend, Francis Hutcheson.

Hutcheson writes:

Each one has a natural right to the use of such things as are in their nature fitted for the common use of all; and has a like right, by any innocent means, to acquire property in such goods as are fit for occupation and property, and have not been occupied by others. The natural desires of mankind, both of the selfish and social kind, shew this right. And t'is plainly cruel and unjust to hinder any innocent acquisition of another.⁷⁴

But acquisition by some persons of such natural goods cannot be so extensive as to (1) oppress other persons or (2) frustrate the diligence of mankind.

But as property is constituted to encourage and reward industry, it can never be so extended as to prevent or frustrate the diligence of mankind. No person or society, therefore, can by mere occupation acquire such a right in a vast tract of land quite beyond their power to cultivate, as shall exclude others who may want to work, or sustenance for their numerous hands, from a share proportioned to the colonies they can fend.⁷⁵

and

Mankind must not for ages be excluded from the earth God intended they should enjoy, to gratify the vain ambition of a few who would retain what they cannot use, while others are in inconvenient straits.⁷⁶

Hutcheson further argues that "things once in property may return again to a state of community if the proprietor designedly neglects them: and then the next occupier may acquire them"⁷⁷. In this way, natural resources are not wasted. They become the property of those who need them, and desire to use them.

In Hutcheson's theory, limits are placed on the size of individuals' property holdings. "Agrarian laws" may be made and used to "put a stop to the immoderate acquisitions of private citizens"⁷⁸. This may be done to safeguard the rights and interests of other private citizens⁷⁹ or to safeguard the interests of the whole society⁸⁰. Not only primary but also secondary acquisition (acquisition by inheritance, gift etc) must be limited by civil laws. "This right therefore of devising by will seems manifestly founded in the law of nature, tho' civil laws may limit the exercise of it in common with all other rights respecting property"⁸¹. The institution of private property has its drawbacks or "inconveniences" Hutcheson says, and thus it requires some modification. This modification is accomplished "by a censorial power (the power of government to tax) and proper laws about acquisition, testaments and succession"⁸².

It is clear that Hume's theory of property acquisition (primary and secondary) differs greatly from Hutcheson's (and Locke's). His theory has much more in common with Robert Filmer's. Filmer, it will be recalled, claims that God first gave Adam complete sovereignty over the Earth, and that, therefore all property is eternally subject to the power of Adam's heirs. Adam historically acquired all the land, and, therefore, its future is determined by that acquisition - other people can legitimately come to hold property only if they received it as a free gift from Adam's heirs. Once we have stripped off from this theory the theological and Natural Law pre-suppositions, it is essentially similar to Hume's theory. After an individual, B, justly acquires some property, someone else can come to hold that property only if it is legitimately transferred to them by B. Under both theories land is never "returned" to the community, nor are the needs of the community, no matter how urgent, relevant to the continued holding of that property by B. In both theories, (1) ultimate control over all property rests in the hands of the individual owner who alone is at liberty to dispose of that property in whatever manner he pleases, and (2) ultimate control over property is so complete and absolute that the needs of others, however desperate, are never considered a relevant factor in the determination of just entitlement.

4.2.2 Positive in rem Rights to Aid

Hume admits that a wealthy man has a duty to help those in great need. "A rich man", he says, "lies under a moral obligation to communicate to those in necessity a share of his superfluities"⁸³. But, as in Filmer's account, this moral obligation is one of charity (in the modern sense of the word), and not one of justice⁸⁴. The communication of a share of one's superfluities to the poor and needy is not one of the rules or principles of just social organisation. We have seen that Hume's rules and principles omit all reference to men's needs. In Hume's account a man has no right or title to a share in a wealthy man's superfluities; he cannot insist upon being given such a share. If the wealthy man chooses not to discharge his moral obligation, there is nothing the poor man can do, for it is a voluntary contribution on the part of the wealthy man.

It is clear, then, that Hume's theory embodies no positive in rem rights, for a right or title (against the community) to one's subsistence is just such a right. All the in rem rights in Hume's theory are negative. A man has a right (against the community) to be left alone to enjoy his property. He has a right that others do not interfere with him; he has a right to their "restraint and forbearance". One important distinction must be made. We have said that Hume's theory embodies no positive in rem rights. It would not be true to say that his theory embodies no positive rights at all, for his theory clearly embodies positive in personam rights. Positive in personam rights are rights to be given things, not by society as such, but by particular individuals. Positive in personam rights are an important feature of market societies and of all societies^{*} that are based upon a division of labour. If A pays B money in advance for "five hogs-head of wine", B has a right to the wine in question. We can say that B has a positive in personam right. He has a right (against B) to be given the goods in question. Positive in personam rights are rights against specified individuals and they arise out of contracts and promises.

In the last chapter, we saw that Locke argues against Filmer that, without such positive in rem rights, without a right or title to that which is needed for subsistence, the very survival of the poor and needy is contingent upon the consent of the wealthy. Such an absolute

property as Filmer allows "gives a man power over the life of another"; it allows him "arbitrary authority" over that other man; it allows him "to make use of his necessity to force him to become a vassal and to master him to obedience". In short, the absolute right to property brings with it absolute power and authority.

The same criticisms that Locke raises against Filmer's theory are raised by Thomas Reid against Hume's theory. Further Reid's solution is the same as Locke's. Justice requires that there be some positive in rem rights. The needy have a right or title to a share in the "surplusage" of the wealthy man's goods. Like Locke, Reid distinguishes between two kinds of property (1) that which "must presently be consumed to sustain life" and (2) that "which is more permanent" and which "may be laid up and stored for the supply of future wants"⁸⁵. Like Locke, he argues that it is from this second category of "surplusage" or "permanent" property that the rights of the poor and needy are to be met.

What has been said above, of the natural right every man has to acquire permanent property, and to dispose of it, must be understood with this condition, that no man may be thereby deprived of the necessary means of life. The right of an innocent man to the necessities of life, is, in its nature, superior to that which the rich man has to his riches, even though these be honestly acquired. The use of riches or permanent property is to supply future and casual wants which ought to yield to present and certain necessity.

As in a family, justice requires that the children who are unable to labour, and those who by sickness are disabled, should have their necessities supplied out of the common stock, so, in the great family of God, of which all mankind are the children, justice, I think, as well as charity, requires that the necessities of those who, by the providence of God, are disabled from supplying themselves, should be supplied from what might otherwise be stored for future wants.

From this it appears that the right of acquiring and that of disposing of property, may be subject to limitations and restrictions, even in the State of Nature, and even more in the state of Civil Society, in which the public has ... what writers in jurisprudence call an 'eminent dominion' over the property, as well as the lives of the subjects, as far as the public good requires.⁸⁶

It might be thought that Reid's vacillation between "justice and charity" in the above passage stems from some profound uncertainty on

his part as to which virtue is really involved. But such a charge would be unfounded. He may use the two words rather freely (in the Natural Law tradition), but his ideas are clear enough. It is a right to the necessities of life, and it is a right which is superior to that which the rich man has to all his riches. The inferior right, that of the rich man to keep all his riches, must yield to the superior right. For Reid, as for Locke, the rights of ownership must yield to the claims of necessity. Such a limitation on the right of ownership is not merely ad hoc, as we have already seen. Rather it is motivated by the same considerations that give rise to the general rule. Reid and Locke both derive the right of appropriation from the right to life or preservation. "A right to life implies a right to the necessary means of life", Reid says⁸⁷. But a person cannot effectively preserve himself if his very survival is contingent upon the consent of another person. There must be positive in rem rights - rights to be given what one needs for one's preservations by others.

Like Locke and Pufendorf, Reid argues that the positive in rem right that is applicable in the State of Nature is not abandoned when men enter Civil Society. Men's right of "acquiring and disposing" of their property is always subject to "limitations and restrictions", but these limitations and restrictions are even greater in Civil Society than in the State of Nature. Like Locke, Reid argues that the Civil Society regulates property in accordance with the "public good" which is the good of all men, and that when men enter Civil Society they give to the government the "executive powers" they formerly possessed⁸⁸.

In the last chapter, we noted that theories of justice or just social organisation could be classified into two kinds - (1) Conservative justice and (2) Ideal or Prosthetic justice. We saw that conservative justice aims to "preserve an existing order of rights and possessions or to restore it when any breaches are made", and that it is "concerned with the continuity of a social order over time, and with ensuring that men's expectations of one another are not disappointed". In contrast, as we saw, ideal or prosthetic justice aims at "modifying the status quo in accordance with some ideal standard; that it takes into account such factors as "persons qualities and circumstances" in contrast with conservative justice which takes into account only such factors as "established practices and past transactions", and that

central to ideal or prosthetic justice are the notions of desert or need⁸⁹.

Hume's theory, like Filmer's is clearly one of conservative justice. Reid's, like Locke's, while largely conservative, has an obvious prosthetic element embodied in it. The status quo is slightly modified by the admission of the positive in rem right to be given what one needs for one's preservation. Urgent need is considered to be a just basis of distribution. If there is a conflict between urgent need and "permanent property" rights, the former, not the latter, must be acknowledged.

It is clear from the above discussion that some prosthetic element, some positive in rem rights must be acknowledged in a society if the lives of some men are not to be contingent upon the consent of other men. An absolute right to property brings with it an absolute power and authority over the lives of other men, as Locke and Reid clearly saw. It is clearly implausible to hold:

- (1) that a man whose life is contingent in this way will be "indifferent" to the question of "what possessions are assigned to particular persons"

and

- (2) that it is the case that all rules of property distribution are equally in all men's interests.

4.3 Hume's Anti-Redistributionist Arguments

It is clear that Hume's theory of property and just social organisation neglects all considerations of need and positive in rem rights to welfare. That he should take this strong line against redistribution may seem all the more strange in view of various statements he makes about gross inequalities.

It must be confessed that, whenever we depart from this equality (of goods), we rob the poor of more satisfaction than we add to the rich, and that the slightest gratification of a frivolous vanity in one individual, frequently costs more than bread to many families, and even provinces.⁹⁰

and

Every person, if possible, ought to enjoy the fruits of his labour, in a full possession of all the necessities, and many of the conveniences of life. No one can doubt that

such an equality is most suitable to human nature and diminishes much less from the happiness of the rich, than it adds to the satisfaction of the poor.⁹¹

He adds that "a too great disproportion among the citizens weakens the state". Thus, on the grounds of utility, gross inequalities cannot be justified⁹². Despite this, Hume believes that attempts to lessen inequalities through redistribution must always have disastrous consequences. He argues that redistribution (1) undermines the stability of society and (2) results in coercive interference in people's lives and a loss of liberty. The argument from the stability of society (a typically conservative argument) appears in the Treatise, and the argument from liberty (a typically liberal argument) is found in the Enquiry. I shall examine each in turn.

The Argument from the Stability of Society

Miller suggests that, for Hume, "the social fabric has a rather delicate character"⁹³. The habit of observing the principles and rules of society must be "built up gradually, and so stability is a cardinal virtue of societies". Hume issues a "dreadful warning of what may happen if the rules of property are not strictly respected".

It is impossible for men to consult their interests in so effectual a manner, as by an universal, and inflexible observance of the rules of justice (i.e. property and just social organisation) by which alone they can preserve society, and keep themselves from falling into that wretched and savage condition which is commonly represented as the State of Nature.⁹⁴

The principles and rules of property are designed to settle those disputes about property that are likely to disrupt society, and, Hume argues, they will fail to achieve this objective if they are not universally and inflexibly observed⁹⁵.

It could be argued that it would be more "just" to settle property disputes on the basis of the suitability of the property to the contending parties. It could be argued that the poor widow in Hume's melodrama should be allowed to retain the family homestead even though the mortgage is overdue because to the bank her payment may represent only a few pounds in an already sizeable fortune, while to her it may mean the very existence of herself and her family⁹⁶. But this view, Hume argues, is short-sighted. To vary the rules to accommodate the particular case would create confusion and contention. Under such circumstances, property would not, in any real sense, be stable or

secure at all. A man's property would be his own only so long as the magistrate thought it suitable to him. And when property is not stable, there can be no society. The principles and rules must be consistently observed. Thus Hume is:

Convinced that any attempt to assign possessions to individuals on the grounds of merit or suitability would quickly call into question the whole system of property, and hence threaten the stability of society.⁹⁷

Hume is correct to argue that there is a need for strict impartiality in the application of rules. There can be no special cases. To vary the rules to accommodate the particular or special case would create confusion and contention. Thus a magistrate cannot judge against someone who, according to the rules, has a rightful title to some property, because he judges him to be a "seditious bigot". If this were so, a man's property would be his only so long as the magistrate thought it suitable to him. To say that there should be no special cases is to say that the rules must be universally applied, applied without exceptions. The rules must be "rigid" and "inflexible" in that they cannot be "bent" arbitrarily to favour or disfavour particular individuals. There can be no exceptions to a rule.

However, a distinction can be drawn between an exception and an exceptive. A rule that is universal cannot allow exceptions, but it can allow exceptives which are qualifications or conditions built into the rule⁹⁸. An exceptive makes a rule more specific, but it still remains universal. It can be applied impartially and without exception. We can contrast:

- (1) To each all the product of his honest industry
- (2) To each all the product of his honest industry except to John Doe and to Richard Roe who are seditious bigots
- (3) To each all the product of his honest industry except where others are in urgent necessity

Rule (2) has an exception built into it; rule (3) has an exceptive built into it. Rules (1) and (3) are both universal rules, but rule (3) is more specific than rule (1). Hume says that it is necessary to have a "universal and inflexible observance of the rules". Such a universal and inflexible observance is as possible in the case of rule (3) as it is in the case of rule (1). It may be necessary to spell out the criteria of "urgent necessity" because interpretations

may vary, but if this is done, the rule may be universally observed. Theories like Locke's and Reid's incorporate such exceptives into the rules, and it is these exceptives that constitute the "prosthetic" element. Locke's and Reid's rules could be summarised as:

To each all the fruits of his honest industry except where others are in great necessity and poverty

To each all the product of his rightful inheritance except where others are in great necessity and poverty.

It is thus clear that a rule may be "universally and inflexibly observed" even though it has an exceptive built into it. One could thus argue that positive in rem rights could be admitted, and the stability of society would not be undermined.

I think that Hume would reject this argument for positive in rem rights for the following reason. He would argue that a strict observance of the rules is a necessary condition of stability in society, but that such observance, by itself, is insufficient to produce that stability. It is requisite, in addition, that the owner be placed in absolute and full control of what he owns, subject to no conditions and qualifications, so that he alone can decide how to use or dispose of that property. Any prosthetic element, or exceptive built into a rule has the effect of altering existing titles⁹⁹. B's urgent need and poverty can create a title in the wealth of another. In this way the absolute control of the owner is removed. It is subject to "limitations and restrictions"¹⁰⁰. For Hume, the security of society is only possible where property is firmly "fixed" to persons. It is clear that Hume regards redistribution (in any form and at any level) as being antithetical to his principles of property or "Laws of Nature" as he sometimes calls them. By calling Stability of Possession, and Transference by Consent "natural laws", he implies that there ought to be an absolute prohibition to redistribution of wealth - for when he calls something a "natural law" he means that it is "inseparable from the species"¹⁰¹; the species cannot exist without it. Thus he is saying that without such fixing of property to persons, and without this absolute and complete control of owners over their property, the very existence of the human species will be threatened. Is this extreme position justified?

Miller writes that in Hume's view:

Once the notion that the present distribution of property is not sacrosanct is abroad, it will be impossible to restrain the natural impulses of greed. We must remember that:

'This avidity alone, of acquiring goods and possessions for ourselves, and our nearest friends is insatiable, perpetual, universal and directly destructive of society.'¹⁰²

All prosthetic principles seek to alter existing titles. This, of course, means that the present distribution of property is not sacrosanct. Once this idea is abroad, Hume believes, the natural impulses of greed will surface and the stability of society will be undermined. However, we have seen how disadvantageous are Hume's rules and principles to many members of society. If people are as avid and greedy as Hume states, the disadvantaged would have every reason to band together into hoardes and steal their wants. Thus, if men are as avid and greedy as Hume fears, failure to modify existing titles would also undermine society. If we assume, on the other hand, that men grow accustomed to the rules and practices of their society and are motivated by habit and custom, there is no problem. If men can become accustomed to a set of rules and principles according to which even their most basic necessities are unmet, they could surely become accustomed to a set of rules and principles which ensure them at least a minimum level of well-being!

We can, therefore, question Hume's belief that, on the whole, redistribution has unfortunate consequences. An absolute prohibition against redistribution on the grounds that the consequences are inevitably unfortunate seems unjustified.

One could argue that whether the consequences are or are not unfortunate depends to a large extent upon the circumstances and manner of redistribution. If the redistribution takes the form of an arbitrary expropriation and confiscation of the land or income from the more well-to-do to the less well-off, ownership is certainly unstable, and the stability of society will probably be at risk. If the redistribution is effected by taxation, this is not very likely. It is possible, though, that if tax laws, and any other rules of redistribution are constantly rewritten, there could be a kind of psychological "instability" or uncertainty and people's expectations could be frustrated or disappointed. This is unlikely to undermine the stability of society, but it might have other undesirable consequences. But it

is not likely that conflict and contention will always attend all attempts at redistribution. If redistribution policies are relatively stable and well known, redistribution can take place in a way which makes it possible for people to assess its results for them, and to make appropriate adjustments. In this way, they may retain a major part of their property and wealth without radically altering the structure of ownership in a short time, and without undermining the stability of society.

Not only may it be possible to redistribute without undermining the stability of society, but redistribution may actually have the effect of increasing social co-operation and mutual trust. There can be little reason for general goodwill and co-operation in a society whose basic social structure allows many of its members to live a wretched life or to perish altogether. In such a situation the social fabric is bound to have a delicate character, as Adam Smith clearly saw:

The affluence of the rich excites the indignation of the poor, who are often both driven by want, and prompted by envy, to invade his possessions. It is only under the shelter of the civil magistrate that the owner of that valuable property can sleep a single night in security. He is at all times surrounded by unknown enemies, whom, though he never provoked, he can never appease, and from whose injustice he can be protected only by the powerful arm of the civil magistrate continually held up to chastise it.¹⁰³

Pure conservative principles of the type Hume outlines lay the foundations for a basic social structure which fosters "the anti-social passions" of "avarice and ambition in the rich"¹⁰⁴ and "indignation and envy in the poor". Redistribution may provide each member of society with a comfortable existence and it is plausible to argue that those anti-social passions which Smith catalogues may be greatly diminished. In this way redistribution has the effect of ensuring the stability of society rather than undermining it.

The Liberty Argument

In the Enquiry, Hume gives consideration to the idea that property should be assigned in accordance with a principle of strict or perfect equality, that each person should have an equal share of such external goods as are provided by nature, or produced by human labour. He recognises the adequacy of the material wealth within more advanced civil societies to sustain arrangements of equal distribution.

It must indeed be confessed that nature is so liberal to mankind that, were all her presents equally divided among the species, and improved by art and industry, every individual would enjoy all the necessities, and even most of the comforts of life, nor would ever be liable to any ills but such as might accidentally arise from the sickly frame and constitution of his body.¹⁰⁵

Not only is equal distribution possible, but it would appear to be advantageous to precisely those individuals who are disadvantaged by laissez-faire principles.

It must also be confessed that whenever we depart from this equality, we rob the poor of more satisfactions than we add to the rich, and that the slight gratification of a frivolous vanity in one individual frequently costs more than bread to many families and even provinces.¹⁰⁶

But these advantages are more apparent than real.

Egalitarian principles of justice are not in the long-term interests of the poor, or of anyone. Such principles are "extremely pernicious to human society".

Render possessions ever so equal, men's different degrees of art, care and industry will immediately break that equality ... The most vigorous inquisition is requisite to watch every inequality on its first appearance, and the most severe jurisdiction to punish and redress it. But besides that, so much authority must soon degenerate into tyranny and be exerted with great partialities.¹⁰⁷

Hume's argument is that a distribution in accord with the favoured pattern of strict equality will soon be overturned if individuals follow their natural abilities, talents, purposes and ambitions. The distribution of perfect equality, D1, will be changed into a new inegalitarian distribution, D2. To maintain the favoured distributional pattern, D1, "vigorous inquisition" and "severe" and "tyrannical jurisdiction" will be needed. The maintenance of the egalitarian pattern will require that the state interfere coercively and continually in people's lives to prevent their doing as they choose. Perfect equality is thus inimical to liberty. In terms of the dominance criterion we used earlier, we could say that, for Hume, egalitarian principles of justice, P2, are dominated by free market principles, P1, in that each and every person (poor and rich alike) is better off under P1 than under P2. Under P2, they are denied their liberty and suffer coercive interference while under P1 they retain their liberty and do not suffer coercive interference.

Now Hume, of course, applies his argument to principles of justice designed to create and maintain perfect equality. It is not at all clear whether he would want to say that there would be a loss of liberty and coercive interference in people's lives in cases where the amount of redistribution falls well short of equality, where, for example, principles of justice are instituted which secure a minimum level of material welfare to all persons unable to provide this for themselves. Certainly, he describes "stability of possession" as a "law of nature", that is, one that is "inseparable from the species" and he appears to believe that free market principles exhaust the concept of justice, so it might well be that he would also argue that even very mild forms of redistribution result in coercive interference and a loss of liberty. I have suggested that principles of justice that incorporate some positive provision of welfare dominate Hume's free market principles on two grounds. First, where such principles operate, all persons can be assured of the material means of life; secondly such principles enhance the stability of society. But if it were found to be the case that principles of justice that incorporate such positive welfare provision always lead to coercive interference and a loss of liberty, it could reasonably be objected that such principles do not dominate Hume's free market principles. I shall try to show that such principles need not result in any coercive interference or loss of liberty to any person.

In Hume's account, the "moral obligation upon the rich to communicate to those in need a share of their superfluities" is an imperfect duty (a duty of charity). Suppose instead that it were a perfect duty (a duty of justice). Must its enforcement lead to a loss of liberty in Hume's sense? Must it, in other words, lead to coercive interference in people's lives and a tyrannous and severe jurisdiction? Moreover, must it be applied with great partiality? It would seem that this would depend, in large part, upon the method used to estimate and collect this surplus. If some official, for example, the magistrate, were empowered to enter the homes of the wealthy and remove particular possessions he deemed superfluous to their owner, the criticism would be well-founded - for this surely does amount to "tyrannous jurisdiction" and does admit of "great partiality". But there seems to be no reason why such a method should be used. The method of raising the requisite revenue by taxation from declarations of income made to government may be used instead. It is a method

not unknown in the eighteenth century, for Kant, as we shall see in Chapter 4, proposes it as the appropriate method of financing welfare for the needy. Such a method avoids not only "tyrannous jurisdiction" but partiality as well for by using the method of "lawful assessment" people pay in proportion to the property they hold or the profits they make.

It could be argued that while the worst excesses of interference and loss of liberty may be avoided by this method, there is still some interference and loss of liberty (and privacy) because a person must disclose to some official of government the amount of income, its source, and possibly his expenses, and this is a matter that concerns the property-owner himself and no other person. Now this argument does not convincingly defeat the case for raising revenue for welfare, for clearly it applies just as strongly to raising revenue for other government expenses too. The problem (if indeed it is one) is a general one concerning raising revenue per se and is not a special one concerning raising revenue for welfare for the needy. Any state - even one of minimal scope and activity - requires some funds with which to operate, and if it is to be able to raise the requisite revenue and make calculations, it must have some details of people's wealth. Moreover, as Hutcheson points out, it is only by having details of everyone's wealth (and expenses) that justice can be done¹⁰⁸ - that people pay proportionately to their wealth and expenses and that partiality be avoided. "This proportion can never be observed", he writes, "without a census or an estimation made of all the wealth of private families at frequently recurring periods, once in five, six or seven years ... By a census all would be burdened proportionately to their wealth; and thus the publick expences oppressive to none beyond his neighbours"¹⁰⁹. A person's expenses should also be taken into account - for example, "the unmarried should pay higher taxes as they are not in the charge of rearing new subjects to the state"¹¹⁰. Where welfare provision is included in the public expenses, the same method of assessing and collecting revenue may still be employed. Thus, the addition of welfare provision to the list of public expenses need not lead to a greater loss of liberty and coercive interference than that which would exist were there no such provision.

Of key importance in liberal theory is what Hutcheson calls "natural liberty" (i.e. the natural right to liberty). "Each one has a natural

right to exert his powers, according to his own judgment and inclination in all such industry, labour or amusements as are not hurtful to others persons or goods"¹¹¹. Moreover, each one has "a natural right to enter into an intercourse of innocent offices or commerce with all who incline to deal with him". Now some kinds of socio-economic systems designed to redistribute or maintain particular distributions of property and income do prevent persons employing their "active powers" according to their own choice and judgement by "putting their actions under the direction of others" - for example government officials choose the occupation at which each person will work, the number of hours of work, the pay each receives, or they make it illegal for one to dispose of one's income in certain ways or to "enter into an intercourse of innocent offices or commerce" with other persons. Such systems, thus, entail loss of liberty and coercive interference. We shall see in the next chapter that J.S. Mill criticises St. Simonism on precisely these grounds. It is perhaps such a system that Hume envisages when he writes of "tyrannous jurisdiction" and argues that the natural operation of persons' inclinations, ambitions and skills will be "checked" or limited¹¹². But the method of taxation described above can achieve redistribution and guarantee basic material needs are met but without such coercive interference and loss of liberty. Persons may still, for example, employ their "active powers" in the "industry and labour" of their choice (that is, choose their own occupations) in order to acquire the material means of life and enjoyment for themselves and their families. Moreover, once their property or profits have been taxed, they may use that part which remains to them in whatever way they choose provided they do not violate the negative rights of others. They may dispose of that which remains to them as they choose, saving it, giving it away, or exchanging it for other goods or services. There need be no government officials directing one's spending activities by issuing prohibitions on certain kinds of spending (for example, "Do not engage a private tutor for the education of your children"). The taxation method, therefore, can effect redistribution and ensure a social minimum to all persons but without "tyrannous jurisdiction" and "vigorous inquisition".

Now it might be thought that the 'social minimum by taxation' method does not lead to "tyrannous jurisdiction" in the sense that officials seize one's goods or direct one's activities by drafting one into jobs or

prohibiting certain kinds of spending, but that it does involve "tyrannous jurisdiction" in another sense. There is "tyrannous jurisdiction" in the sense that A is forced (by government officials) to contribute to B's welfare. A may be free to choose his own employment, to acquire property by any moral means, but he is not free to dispose of all that property as he pleases. He is free to dispose of only that part which remains after the material needs of B have been met. Forcing A to contribute to B's welfare is itself a form of tyrannous jurisdiction and coercive interference in A's life. Now this is an argument put forward by Robert Nozick and other libertarians and does not appear to be what Hume means by "tyrannous jurisdiction" and "severe inquisition". I shall, therefore, reserve my discussion of the argument until Chapter 4 where I shall attempt to show that Nozick's criticism is ill-founded.

Conclusion

Hume's merit is to show that entitlements to property grant powers and rights and they cannot therefore be disregarded, altered or abolished at the whims of others, just because it may be useful to do so. "Property rights empower individuals with, and protect them in, the capacity to use, dispose of, or otherwise control objects of property according to their private purposes, subject to certain limits upon infringing the rights of other persons and subject to legitimate public purposes". Such rights cannot be infringed or violated and the property handed to somebody else just because the magistrate believes that that other person would be a more suitable owner. Hume's description of the principles as "laws" that are "natural and inseparable from the species" correctly point to the strength and importance of the rights involved. But Hume's mistake is to overrate their strength and importance. He believes that such rights must never be infringed or violated under any circumstances. While it seems correct that such rights should not be infringed or curtailed without very strong reasons, it does not seem correct that such rights should always prevail over all other claims. Hume does not successfully show why the right to property should override all other considerations. Further, he does not successfully show why, in principle, the advantages of stability of possession and transfer by consent, which are to

a certain degree necessary to both individual and societal well-being, cannot be sustained while some redistribution secures at least a minimum level of well-being for those without the means to do so for themselves.

FOOTNOTES: HUME'S THEORY OF PROPERTY

1. Hume's Moral and Political Philosophy. Edited and with an introduction by H.D. Aiken, p.xiv.
2. ELN p.157.
3. Treatise p.171.
4. The Letters of David Hume. Edited by J.Y.T. Greig, 1969, vol.1,,p.33.
5. Enquiry Concerning Human Understanding. Edited by L.A. Selby-Bigge, 1951, 11, 114 p.148.
6. Ibid. 11, 110, p.142.
7. Ibid. 11, 110, p.142.
8. Forbes, Duncan Hume's Philosophical Politics, 1975, p.65.
9. Ibid. p.68.
10. T p.484.
11. T p.484.
12. T p.485.
13. T pp.485-486.
14. T p.485.
15. T p.485.
16. T p.485.
17. T p.486.
18. T p.486.
19. T p.486.
20. T p.486.
21. T p.486 and p.491.
22. T pp.483, 484, 486, 487, 488-9, 518.
23. T pp.494-495.
24. T pp.491-492, 497.
25. Of the Original Contract, Essay XII, p.454.
26. T pp.491-492, 497.
27. T pp.487-489.
28. T p.487.

29. T p.487.
30. T p.497.
31. T p.497.
32. Becker, L. Property rights, p.58.
33. Ibid. p.59.
34. EPM Sect 3 Pt 1 p.186.
35. EPM Sect 3 Pt 1 p.186.
- 36a. Hart, H.L.A. The Concept of Law, p.192.
- 36b. T p.497.
- 36c. T p.497. Quoted in: David Miller Social Justice, p.162. See also T. pp.529 and 534.
37. Gauthier, David "David Hume, Contractarian." in Philosophical Review, vol.88, 1979, pp.9-11.
38. Ibid. p.17.
39. Ibid. pp.9-11, 19.
40. Ibid. pp.7-8.
41. Ibid. p.7.
42. Ibid. p.23.
43. EPM p.310 (Appendix 3 Footnote) Quoted in: David Miller Social Justice, p.162.
Hume makes this point in several other places: for example, "There are no doubt motives of public interest for most of the rules which determine property; but still I suspect that these rules are principally fix'd by the imagination, or the more frivolous properties of our thought and conception" (T p.504 Footnote). See also EPM, Section 3 Pt 2, p.195.
44. Miller, David op. cit. p.162.
45. EPM Appendix 3 Footnote.
46. Gauthier, David op. cit. p.23.
47. Ibid. p.23.
48. T p.526.
49. T pp.502-503.
50. The idea that claim-rights correspond or correlate with duties on the part of others is called the "Correlativity Thesis". This is the analysis of claim-rights given by Joel Feinberg in Social Justice - see my Introduction, pp.8-11. The same idea is also found in:

Hart, H.L.A. "Are there any Natural Rights?" in Political Philosophy, edited by A. Quinton, p.56 and
Wollheim, R. "Equality and Equal Rights" in Justice and Social Policy, edited by F.A. Olafson, p.120.

It will be seen (esp. section 4.2.2 of this chapter) that, for Hume, the duties with which in rem claim-rights correlate are all negative i.e. they are duties of non-interference or forbearance. For Locke (and Reid), in contrast, some in rem claim-rights correlate with positive duties on the part of others i.e. they are duties which demand positive action.

51. Gauthier, David op. cit., pp.4-5.
52. T p.504 note.
53. T p.503.
54. T p.506n.
- 55a. T p.506. 55b. T p.507.
57. T p.509n.
58. T p.514.
59. T p.514.
60. EPM Appendix III, p.278.
61. T p.520.
62. T p.520.
63. T p.520.
64. Gauthier, David op. cit., p.24.
65. Schelling, T.C. The Strategy of Conflict, chapters 3 and 4;
Buchanan and Tullock The Calculus of Consent, chapters 2, 4 and 8;
Luce and Raiffa Games and Decisions, sections 2.1, 3.6 and 8.6.
66. T p.497.
67. T p.497.
68. T p.497.
69. Miller, David op. cit., p.173.
70. T p.486.
71. T p.492.
See descriptions by Huff and Ardal on the power of self-interest.
Huff, T. "Self-Interest and Benevolence in Hume's Account of Moral
Obligation" in Ethics, vol.83, 1972, pp.58-70.
Ardal, P. Passion and Value in Hume's Treatise, p.177.
72. Miller, David op. cit., pp.25-26.

- 73a. Miller, David op. cit., p.162 73b. T p.507n.
74. Hutcheson, Francis A System of Moral Philosophy, Book 2, p.298.
75. Ibid. Book 2, p.326.
76. Ibid. Book 2, p.328.
77. Ibid. p.335.
78. Ibid. p.327.
79. Ibid. p.298.
80. Ibid. p.248.
81. Ibid. p.353.
82. Ibid. p.323.
83. T p.482.
84. In Essay II - "Of Refinement in the Arts", Hume describes the "relief of the necessitous" as an act of "generosity and charity", pp.285-286.
85. Essays on the Active Powers, Essay 5, Chapter 5 "Of Justice", p.420.
86. Ibid. pp.423-424.
87. Ibid. p.421.
88. Ibid. p.423.
89. Miller, David op. cit., pp.25-6.
90. EPM p.194 and quoted in Miller, David Social Justice, p.167.
91. Essay I Of Commerce, p.271.
92. Miller, David op. cit., p.167.
93. Ibid. p.174.
94. T. p.534. Quoted in Miller, David Social Justice, p.174.
95. Miller, David op. cit., p.165; T pp.530-533.
96. Ibid. p.165.
97. Ibid. p.175.
98. See Harrison, J. in Wolff R.P., Kant, 1968. and Rashdall, H. The Theory of Good and Evil, vol.1, p.116.
99. Miller, David op. cit., pp.25-26.
100. See Reid T. EAP, Essay 5, Chapter 5, pp.423-424. Reid makes

it clear that property rights in the State of Nature and in Civil Society are subject to "limitations and restrictions".

101. T p.484.

102. Miller, David op. cit., p.175

103. Smith, Adam The Wealth of Nations vol.2, Bk.5, Ch.1, pt 2, p.202.

104. Ibid. vol.2 Bk.5, Ch.1, Pt.2, p.203.

105. EPM p.193.

106. Ibid. p.193.

107. Ibid. p.194.

108. Hutcheson, Francis System of Moral Philosophy, p.341.

109. Ibid. p.341.

110. Ibid. p.319.

111. Ibid. p.294.

112. EPM p.194.

CHAPTER 3

J.S. MILL'S THEORY OF PROPERTY

Introduction

Mill is sometimes represented as the champion of laissez-faire theory, liberal entrepreneurship, and the minimal, nightwatchman state¹. In this chapter, I aim to show that this is a misrepresentation of his views, that he rejects classic or negative property rights and the nightwatchman state in favour of a radically reformed system of private property and a positive role for the state. I shall show that Mill's views on property rights and distributive justice are shaped by a conception of human autonomy or "individuality", and that his version of Utilitarianism, his defence of a more-than-minimal state, and his proposals for reform to the system of private property are best understood in the light of this conception. It is, I shall argue, a rich and complex conception, and one that avoids the atomistic, asocial elements of "Bourgeois individualism" with which it is sometimes confused. Such autonomy or individuality requires a just and free society, and is incompatible with the classic or negative right to property.

My plan in this chapter is as follows: In section 1, I shall analyse in some detail, Mill's conception of human autonomy or individuality. I shall show how this conception is intimately related to his views on rights, and the role of government in section 2 and to his account of the distribution of property and wealth in section 3.

1. Mill's Conception of Personal Excellence

1.1 Autonomy or Individuality: Man as Decision-maker

Mill's conception of the person may be classed as Aristotelian insofar as he considers a person as a being distinct from other kinds of entity in the world such as inanimate objects, animals, and plants². Different kinds of entities are distinguishable according to the distinctive powers that members of the class possess. Mill writes that the distinctively human kind of power is choosing or decision-making. It is an activity that calls into play the totality of human powers.

This conception of man as chooser or decision-maker is brought out very clearly in Mill's discussion of custom.

To conform to custom, merely as custom, does not educate or develop in him any of the qualities which are the distinctive endowment of a human being. The human faculties of perception, judgment, discriminative feeling, mental activity and even moral preference, are exercised only in making a choice.³

By virtue of being human, all men have the power to make choices, but these powers exist initially only latently, as potential, and they must be developed through use. "The mental and the moral, like the muscular powers, are improved only by being used"⁴.

By virtue of being human, all men possess the distinctive ability to choose or make a decision. Yet each human being has a unique history which implies a complex of special interests, skills, needs, and desires which make him a distinct individual in society, and thereby the subject of distinct choices.

According to Mill, it is just as foolish to believe that all men have the same mental characteristics as to believe that they have the same physical characteristics:

Human beings are not like sheep: and even sheep are not indistinguishably alike. A man cannot get a coat or a pair of boots to fit him, unless they are either made to his measure, or he has a whole warehouseful to choose from: and is it easier to fit him with a life than with a coat, or are human beings more like one another in their whole physical and spiritual conformation than in the shape of their feet?⁵

Different individuals, Mill argues, will naturally manifest their unique powers and abilities in different modes of behaviour. Mill calls this choosing a "plan of life". Individuals possess unique natures, and they will, therefore, need and desire to live different sorts of lives.

Such are the differences among human beings in their source of pleasure, their susceptibilities of pain, and the operation on them of different physical and moral agencies, that unless there is a corresponding diversity in their modes of life, they neither obtain their fair share of happiness, nor grow up to the mental, moral and aesthetic stature of which their nature is capable.⁶

There is no answer to the question of what kind of life a person should lead. Mill sees only a diversity of ends. Depending upon what each individual's particular potentialities are, every human being will devise his own plan of life to develop his potentialities. As Mill states: "There is no reason that all human existence should be con-

structed on some one or small number of patterns".

We find Mill constantly condemning attempts to fit people into certain moulds:

If it were only that people have diversities of taste, that is reason enough for not attempting to shape them all after one model. But different persons require different conditions for their spiritual development; and can no more exist healthily in the same moral, than all the variety of plants, can in the same physical, atmosphere and climate. The same things that are helps to one person towards the cultivation of his higher nature are hindrances to another.⁷

This passage shows that Mill recognises the diversity of human powers and skills, and hence the need for a corresponding diversity of lifestyles or plans of life. Mill believes that individuals cannot choose well if their choices are bound to a single pattern - individuals only choose in an excellent way if their decisions bear the "impress ... of their own judgment (and) their own character". If persons realise themselves by choosing in this way, they do not conform to any single image of perfection.

It is not by wearing down into uniformity all that is individual in themselves, but by cultivating and calling it forth, within the limits imposed by the rights and interests of others, that human beings become a noble and beautiful object of contemplation.⁸

Thus, a person becomes what Mill calls a "progressive being" by calling forth and cultivating what is individual in himself.

For Mill, choosing a plan of life is an activity that calls into play the highest intellectual faculties:

He who lets the world, or his own portion of it, choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation. He who chooses his plan of life for himself employs all his faculties. He must use observation to see, reasoning and judgment to foresee, activity to gather materials for decision, discrimination to decide, and when he has decided, firmness and self-control to hold to his deliberate decision.⁹

For Mill, then, it is not only requisite that a plan of life be appropriate to one's natures and powers; it is also requisite that that plan should develop and perfect one's nature and powers. According to Mill, a person is most fully realising himself, "is most fully living a human existence, when he is involved in choosing through manifest activity in the world, a plan of life, or a way of living that promotes and develops the distinctive powers that have evolved in the course of

that person's history". When a person lives by his own life-plan, he can be said to be living according to his own character, and to live in this way is to realise our common purpose in life. Gray points out that this is the idea that Mill inherits from Von Humbolt who writes:

The end of man, or that which is prescribed by the eternal and immutable dictates of reason ... is the highest and most harmonious development of his powers to a complete and consistent whole.^{10a}

Mill adopts Von Humbolt's conception of harmonious development. The idea is that each individual develops a harmonious system of life-plans whose fulfilment will bring to the individual his "fair share of enjoyment". Although no one can realise all his potential, the key to fulfilling a schema of life-plans is to pursue goals that are compatible and reinforcing of each other. We can infer from Mill's discussion of harmonious development that "individuality" is the cultivation of numerous capacities that result in the greatest amount of fulfilment throughout life. The motivation to grow, to strive for harmonious development, means a pursuit of long-range goals and the need to formulate a comprehensive view of one's interests. The individual, through exercising deliberate choice, adopts goals or a sequence of goals, which will be conducive to his development. As his knowledge of the world increases, he considers new goals or re-arranges his goals into a new pattern. Changing circumstances, and learning from one's own experiences, as well as from those of others, may also result in adjustments in an individual's plan of life. Human development is not merely a series of isolated and unrelated acts, but a process of experimentation throughout life that is accretive, and it is a process, moreover, that uses men's highest intellectual powers and qualities of character^{10b}. To be a genuine self, to fulfil the goal of achieving true individuality, means to act so as to utilise the faculties of the "higher self". This idea of developing and perfecting one's nature, of utilising the faculties of the "higher self", is closely associated with the theory of the qualities of pleasure. Mill believes that some pleasures (those that require the "exercise of higher faculties") are superior to others. Thus, for Mill, intellectual pleasures are better than physical pleasures. He argues that people should help "each other towards increased exercise of their higher faculties, and increased direction of their feelings and aims towards wise, instead of foolish, elevating instead of degrading, objects and contemplations"¹¹.

Mill's theory of the quality of pleasures is not only a theory of value. It is also a key motivational principle. In Utilitarianism, he suggests that men have an inherent tendency to pursue excellence. Men are not only born with a capacity to appreciate the "nobler feelings", but they will be preferred to the "lower pleasures". "It may be questioned whether anyone who has remained equally susceptible to both classes of pleasures ever knowingly and calmly preferred the lower"¹². Mill criticises Bentham for failing to "recognise that man is a being capable of pursuing spiritual perfection as an end; of desiring for its own sake the conformity of his own character to his standard of excellence without hope of good, or fear of evil from other sources than his own inward consciousness"¹³.

Mill's conception of individuality has been criticised as elitist because, it is argued, only a privileged few can act autonomously, choosing their own mode of existence for themselves, experimenting with life, and, generally, living a life that is truly "their own". But it is clearly not Mill's view that such individuality is possible for only a privileged elite. On the contrary, it is the "privilege and proper condition of any human being arrived at the maturity of his faculties". Any person who "possesses any tolerable amount of common sense and experience" can formulate a comprehensive view of his interests, and choose autonomously his own mode of existence. Not only is it possible, but Mill even suggests that each person has an obligation to himself to seek to cultivate his individuality.

The term duty to oneself, when it means anything more than prudence, means self-respect or development¹⁴ and "individuality" he adds "is the same with development"¹⁵. Thus, every person can and ought to cultivate his individuality: everyone has a duty and, by implication, a right to seek his own development or individuality, and this right correlates with a duty of forbearance or non-interference on the part of others. The duty to cultivate one's individuality is not, of course, absolute. "Ought" implies "can", and Mill clearly recognises that it is not possible for all people in all social and economic conditions to cultivate their individuality. In many societies, as a result of faulty social institutions and economic arrangements, large numbers of people are denied the material and educational means requisite for the cultivation of individuality. We shall see shortly that Mill argues that the unreformed laissez-faire capitalism of his day precludes the majority from cultivating their

individuality, but that far-reaching reforms may be instituted which make it possible for all members of society.

1.2 Man as Moral and Social

Mill, then, stresses the value and indeed the naturalness of autonomy and individuality. But Mill's conception of individuality should not be identified with egoism. In his analysis of the well-springs of human behaviour and motivation, he rejects the rigidly egoistic psychological perspective of his predecessors. In his Remarks on Bentham's Philosophy, Mill is sharply critical of the extent to which "Mr. Bentham was a believer in the predominance of the selfish principle of human nature"¹⁶. In contrast, Mill argues, "care for others is, in an admissible sense, as much an ultimate fact of our nature, as care for ourselves ..." ¹⁷. And in Utilitarianism, Mill writes that "the social feeling" of mankind is a "powerful natural sentiment", in particular, there is a strong desire to be "in unity with our fellow creatures"¹⁸. As this sentiment grows in the course of "advancing civilisation", the individual develops "... a stronger personal interest in practically consulting the welfare of others; it also leads him to identify his feelings more and more with their good, or at least with an even greater degree of practical consideration for it. He comes as though instinctively to be conscious of himself as a being who, of course, pays regard to others"¹⁹.

Mill refuses to call these feelings "innate" because many people do not experience them, and many people do not act for the common good. Instead, he calls such feelings "natural"; that is, they exist as real potentialities, essential to the being of any human, and ripe for cultivation. Mill compares this social feeling with the ability to speak.

On the other hand, if, as is my own belief, the moral feelings are not innate, but acquired, they are not for that reason the less natural ... It is natural to man to speak, to reason, to build cities, to cultivate the ground, though these are acquired faculties ... Like these other acquired capacities ... the moral faculty, if not a part of our nature, (i.e. innate) is a natural out-growth from it; capable like them, in a certain small degree, of springing up spontaneously, and susceptible of being brought by cultivation to a high degree of development.²⁰

Such "cultivation" is of prime importance. Mill argues that what preserves society and makes possible virtually unlimited social advancement is education and moral training. As Graham Duncan has pointed out, this, for Mill, includes not merely formal training in schools and universities, but the "entire network of social institutions which mould and form the individual"²¹. What he has in mind is not simply the elimination of ignorance, but also the inculcation of a sense of duty and patriotism, a sense of moral and social obligation. There is a close link, he believes, between knowledge, virtue, and social cohesion and improvement. Unlike his predecessors such as Hume, he argues that human nature has changed significantly, that it can be deliberately shaped, and he has great faith in the "extra-ordinary power of a well-designed educational system"²².

It is interesting to note that Mill's belief (albeit undefended) that "men have a natural desire to be in unity with their fellow creatures" and that their social feelings may be stimulated by education, enables him to escape from a difficult dilemma. He claims, quite plausibly, that a person's intellectual abilities and distinctive character fade when he does not choose for his own reasons and in accordance with his own desires. "Progressive beings" judge, decide and choose for themselves, in accordance with their own reasons and desires. Might not somebody decide, however, on the basis of reasoning that his desires will only be satisfied if he does not conform to certain moral requirements on other-regarding conduct? It would seem that an ideal society must either educate its members to develop excellence in choosing and run the risk of their not cultivating other-regarding virtues, or it must aim to educate its members to exhibit other-regarding virtues, and run the risk of preventing individuals from choosing for their own reasons, thereby starving and "withering" their "human capacities". Mill, as we can see, escapes from this dilemma. He argues that persons raised in his ideal society will choose, on the basis of their "own" judgment to exhibit the other-regarding virtues of progressive beings. They can do so, of course, because social feelings are natural; they only require stimulation from an education system. In this way he can argue that his ideal society can consistently aim to educate persons to develop both excellence in choosing and other-regarding virtues because it can educate them to choose to exhibit these virtues in accordance with their own reasons and desires.

It is clear that Mill rejects the psychology of egoism. Not surprisingly, therefore, he also rejects a particular conception of men and society that is closely associated with egoism, that is, the conception of individuals as merely atomic, unrelated entities, and societies as artificial impositions constructed for the sake of peace and material prosperity. According to this latter view, mutual activity and co-operation are solely the result of the pursuit of self-interest.

Mill clearly rejects this "individualistic" society. He states that the thought of a society held together by such "pecuniary interests" is "essentially repulsive"²³ and he adds: "We yield to no one in our wish that 'cash payment' should ^{not} be the universal nexus between man and man"²⁴. "I confess I am not charmed with the ideal of life held out by those who think that the normal state of human beings is that of trampling, crushing, elbowing and treading on each others' heels"²⁵.

For Mill, men are by nature social, and their autonomy is, in part, measured by the degree to which they can work co-operatively with others. All individuals should be free to act as best suits their natures as long as their behaviour causes no harm to anyone. But his ethic is not limited to negative prescription. Mill also believes that human beings should act to promote the good of others and that when they are involved in acting for the common good, they are acting so as to develop their higher faculties. Man's powers include a "moral sense" as well as the capacity to make decisions, and, therefore, it is the kind of decision-making that includes another person as object which is most characteristically human.

It would be a great misunderstanding of this doctrine to suppose that it is one of selfish indifference, which pretends that human beings have no business with each other's conduct in life, and that they should not concern themselves with the well-doing or wellbeing of one another, unless their own interest is involved. Instead of any diminution, there is need of great increase of disinterested exertion to promote the good of others.²⁶

Mill argues that all men have the potential for social concern and concern for others, and activity devoted to the common life is an essential element of well-being.

When people who are tolerably fortunate in their outward lot do not find in life sufficient enjoyment to make it

valuable to them, the cause, generally, is caring for nobody but themselves.²⁷

Mill thus argues that care for others is a natural expression of human life. He suggests that we should act for the good of others not merely out of duty, or because society will benefit, but because we shall be happier by doing so. The well-being of any person depends upon the development of his distinctive human faculties, and, therefore, the social sense must be cultivated before we can experience complete fulfilment in life.

Those who leave after them objects of personal affection, and especially those who have also cultivated a fellow-feeling with the collective interests of mankind, retain as lively an interest in life on the eve of death, as in the vigour of youth and health.²⁸

and

Those only are happy who have their minds fixed on some object other than their own happiness; on the happiness of others, on the improvement of mankind ... followed not as a means, but as an end in itself.²⁹

Ryan points out that Mill opposes the egoistic or "market conception of society" because he believes that individuals need to participate in social life if they are to develop properly³⁰. Thus, he is highly critical of the "selfish egoist, devoid of every feeling and care but those which centre on his own miserable individuality"³¹. Such a man, Mill argues, has lost his ability to take an interest in the activities of the rest of mankind. Thrown back upon his own "selfish interests", he is prone to find life dull and insipid. Duncan similarly points out that Mill "had no notion of the free individual standing alone without any sense of social obligation or concern"³². Instead, Mill viewed the person as "pre-eminently a servant of others" whose self-development involves cultivation of a distinctive social sense "which arises out of common membership in social organisations and wider human need"³³. The "individual" in that very peculiar sense of the term used by Mill is one who has developed all those capacities or abilities which make for a rational person of goodwill.

Mill unequivocally rejects the view that human relations are merely instrumental; personal happiness requires taking a real interest in others' lives and undertaking common endeavours. Thus, while Mill advocates the value of "individuality" he has no notion of the "rugged individual" who makes his way alone and independently of, or, in opposition to, society. Mindless obedience and concern for custom

and status imply a dwarfed personality, but so does disdain or indifference towards the community. For Mill, individuality or autonomy is not antagonistic to sociality. The concept of individuality does not stop at the boundaries of the individual person. An individual cannot isolate himself from everyone else without sacrificing his individuality. Individuality is not a given datum to be protected exclusively from society, but is to be developed through participation with others. The belief that Mill views the individual as "extra social", as in some way standing opposed to society may arise from the fact that he uses the word "society" with disdain when referring to a form of social organisation in which individuals relate to one another as means rather than as ends. For Mill, a genuine "community" is a coalition of "progressive" individuals whose development includes concern for others and which manifests itself in a "spirit of co-operation".

2. Human Nature and the Good Society

In the last chapter, we saw how Hume argues that human nature is unchanging. All men are inherently selfish and greedy and these anti-social tendencies manifest themselves in an insatiable avidity for acquiring external goods. Such qualities of human nature are neither occasioned by the institutions of society, nor are they removed by them. But suitable institutions can serve to control and contain the conflict that would inevitably ensue from the presence of such anti-social tendencies and to bring about a state of peace and security. The elimination of conflict occasioned by scarce external possessions in the presence of limited benevolence was the major problem of justice for Hume.

Mill's conception of human nature is, as we have just seen, very different. He views human nature as a set of capacities or potentialities that can be developed to a greater or lesser extent. The other-regarding potentialities, for example, can be developed or left largely undeveloped. What specifically aids or thwarts the development of men's capacities are societal arrangements and institutions. Mill, in contrast to Hume, sees a two-way relationship between men's natures and institutions. For Mill, societal institutions and arrangements can mould or shape men's natures for better or for worse. Gray points out that given Mill's views on human nature, we should

expect that he will assess societal institutions and arrangements according to whether they enhance or stunt autonomy and personality. "We must expect that considerations of liberty and self-development will be crucial in Mill's assessment" of the various types of social institutions, especially those that relate to property³⁴. Further, we cannot expect Mill to "attach as much weight to considerations of security of expectation and of the co-ordination of economic activities in a world of scarce resources"³⁵ as Hume does. Mill's assumptions about men's natures are quite different from Hume's and this influences the way in which he conceives of the problems facing groups of men in society. He believes that the major problem for the governors of a society is how to ensure the improvement of all men, how to bring about a state in which all men can be autonomous and "progressive" beings.

2.1 Laissez-Faire, Social Welfare and Autonomy

Of central importance is the role that Mill expects the government to play in "material", moral, and educational matters. It is often held that Mill is a supporter of the principle of laissez-faire. I intend to show that Mill's version of this principle is very unlike the orthodox, classical principle for it allows a much more active and positive role for government than mere protection of persons and property. I shall first look at his early writings, and then attempt to show that these are quite consistent with his later works.

Throughout the 1830s, he pointedly rejects what he refers to as the "laissez-faire" doctrine, the notion best described in the phrase "the government is best which governs least". He clearly envisions a much more positive and ambitious role for government than the mere protection of persons and property. He expects government to assist in the shaping of human nature; this he feels is the crucial ingredient in any attempt to improve society generally. In a letter to d'Eichthal, he argues that government "exists for all purposes whatever that are for man's good: and the highest and most important of these purposes is the improvement of man as a moral and intelligent being"³⁶. In an article in The Examiner, he specifically rejects what he calls the "laissez-faire spirit of the prevailing philosophy" which is said "to limit the ends and functions of the social union, as strictly as possible, to those of a mere police". The appropriate

view, he says is that "political society is a combination among mankind for the purposes of helping one another in every way in which help can be advantageous" and he laments the fact that this idea "is yet a stranger to the immense majority of understanding"³⁷. He looks "forward to a time, and no very distant one, in which all the more vulgar and subordinate purposes of government will merge in one grand purpose of advancing the progress of civilisation"³⁸. The implication here is that the "police" function of government is one of its "more vulgar and subordinate purposes".

In another article in the Examiner, Mill registers his support for "gradually interdicting altogether the employment of children under fourteen, and females of any age, in manufactories", and he indicates why he thinks public, governmental intervention of this kind is appropriate. It is said to be true in many cases that "an individual may be presumed a better judge of his own interest than the government" but there are cases "in which it would be highly for the advantage of everybody if everybody were to act in a certain manner, but in which it is not the interest of any individual to adopt the rule for the guidance of his own conduct, unless he has some security that all others will do so too"³⁹.

This, is, therefore, precisely the kind of case in which the government ought to interfere ... The only power which can promulgate and guarantee a compact among all the labouring people of the community is the government. If it is beyond the competency of government to do this, it is beyond their competency to do anything.⁴⁰

Such a line of argument which challenges the inviolability of a contract between employer and employee in favour of the "general interest" or the interest of a large class of people provides a justification for a comprehensive government welfare role. It is a clear departure from the orthodox principle of laissez-faire according to which government should only interfere if there is a clear case of "force or fraud". Mill's proposal could be criticised on the grounds that it places illegitimate restriction on employers and workers who, otherwise, would freely consent to the labour contract, and thereby undermines the foundation of private enterprise. But, for Mill, private enterprise is not merely a private matter. Decisions that take place within and about industry are not limited to the effects that they have on the employers and employees, but have effects on the whole society. Thus, government has the right to "interfere".

In an article in the Jurist, Mill criticises Turgot and other eighteenth-century philosophers who purportedly "conceived the perfection of political society to be reached, if man could but be compelled to abstain from injuring man; not considering that men need help as forbearance ...". These thinkers, he declares, "left each individual to fight his own battle against Fate and Necessity, with little aid from his fellow men save what he of his own spontaneous seeking, might purchase in open market and pay for"⁴¹. Mill's criticism is directed primarily at Turgot, but he could well have had Hume in mind too when he made these remarks. He similarly takes issue with the negative conception of government in his Remarks on Bentham's Philosophy.

Having been preoccupied with the "protection of persons and property", Bentham failed to recognise that this is "but a part of the problem", and it "never seems to have occurred to him to regard political institutions in a higher light, as a principal means of the social education of a people"⁴².

Mill certainly understands his political philosophy to involve a much more positive, even utopian, conception of the purpose and scope of governmental activity than had earlier philosophers such as Hume and Bentham. In his essay on Coleridge, he comes directly to the issue of the proper role of government. He speaks of the so-called "let alone doctrine, or the theory that governments can do nothing better than to do nothing; a doctrine generated by the manifest selfishness of modern European governments ...". As a "general theory", he says, "one half of it is true, and the other half false". Government "ought not to interdict men from publishing their opinions, pursuing their employments, or buying and selling their goods, in whatever place or manner they deem the most advantageous".

But does it follow from this that government cannot exercise a free agency of its own? - that it cannot beneficially employ its powers, its means of information, and its pecuniary resources (so far surpassing those of any other association, or of any individual) in promoting the public welfare by a thousand means ... (No!), a state ought to be considered as a great benefit society, or mutual insurance company, for helping (under the necessary obligations for preventing abuses) that large proportion of its members who cannot help themselves.⁴³

To regard the state as a "great benefit society", "promoting the public welfare by a thousand means" and using its "pecuniary resources" to this end is to envision a far more ambitious and positive role for government than classical liberalism had assigned to it, something

on the order of the modern liberal welfare state.

In a letter to Carlyle, Mill looks forward to a time when the "laissez-faire system" would "expire". "Peace be with its ashes when it does expire", he says, "for I much doubt whether it will reach the resurrection"⁴⁴. The question to be addressed is whether Mill himself is responsible for resurrecting the principle in later years. It is often thought that Mill's brand of freedom is only compatible with a "nightwatchman state", and not with "a great benefit society".

In both the Principles and On Liberty, Mill distinguishes between both self-regarding and other-regarding conduct. In an ideal society, he believes, all adults should have complete freedom in the self-regarding sphere. He must have complete liberty "in all that portion of (his) life and conduct which affects only himself".

There is a circle around every human being, which no government ... ought to be permitted to overstep ... it ought to include all that part which concerns only the life, whether inward or outward, of the individual, and does not affect the interests of others, or affects them only through the moral influence of example.⁴⁵

The main point of On Liberty is to establish that no civilised government (or society) should ever intervene coercively in men's self-regarding affairs. Chapter 5 of On Liberty, and Book 5 of the Principles argue in addition for a presumption against governmental intervention in other-regarding affairs. But it is a presumption only. He claims that, unlike self-regarding conduct, this "conduct, in principle, comes within the jurisdiction of society"⁴⁶. Thus, he claims that the presumption against subjecting other-regarding acts to legal constraints does not follow from the principle of self-regarding freedom.

The recognition that Mill advances his principle of liberty in the self-regarding sphere and his presumption against government intervention in other-regarding affairs as two separate tenets should save us from certain misinterpretations of his social philosophy (the popular view, for example, that because Mill advocates the principle of self-regarding freedom, he is a supporter of the "nightwatchman state"). It should aid us to recognise the contrast between his unconditional advocacy of self-regarding freedom, and his mere pre-

sumption against government intervention in other-regarding affairs. Civilised societies, he believes, should always grant all normal adults complete freedom in the self-regarding sphere. In contrast, while he advances reasons to support presumptions against both coercive and non-coercive government intervention in other-regarding affairs, he claims that these reasons can be overridden.

Mill gives two main reasons for limiting legal restraints on other-regarding conduct, and restricting non-coercive government actions. First, legal sanctions on other-regarding conduct should be limited since this provides freedom for men to cultivate their moral and intellectual powers by making choices⁴⁷. Secondly, government action should be limited to provide room for the growth of diversity. Mill admits that, while these reasons warrant a presumption against such government intervention, there may be situations in which men would be more likely to cultivate their powers if they were subject to, rather than free from, the actions of government. In these situations, "the presumption" should be lifted.

Mill is, in fact, willing to sanction much more extensive governmental action than one might first suppose. It is important to note that these grounds admit a large government role in fostering intellectual and cultural institutions. In particular, the belief that children must be formally educated to develop the moral and intellectual powers required for the cultivation of individuality leads him to support substantial governmental effort to provide proper childhood instruction. This "moral and intellectual education" should be available to "all members of the community". It should be made compulsory by law⁴⁸, and the state should be responsible for the quality of education by instituting a system of examinations. For families unable to pay the expenses of education, the state should provide financial dispensations. Financial inability, Mill feels, should not prevent children from receiving an education⁴⁹. Moreover, the state had a role to play in fostering the diversity in education which is required to match and promote diversity in life:

All that has been said of the importance of individuality of character, and diversity in opinions and modes of conduct, involves, as of the same unspeakable importance, diversity in education.⁵⁰

Such diversity in education can be promoted by the state entering the market for education and subsidising educational experiments through

the granting of endowments⁵¹. In addition, Mill's belief in the worth of intellectual and cultural development leads him to urge in the Principles that the government sponsor other types of cultural and intellectual institutions when it is the only agency in society able and willing to do so. Financial support should be given not only to experimental schools, but also to universities, scientific expeditions, research institutes, libraries, and the development of cultural organisations. It is necessary, Mill announces, to tax individuals so that government can provide these educational services. J. Fitzjames Stephen, therefore, clearly misreads Mill when he alleges that his principles forbid "forcing an unwilling person to contribute to the support of the British Museum"⁵².

The presumption against governmental intervention may thus be lifted to allow the sponsorship of intellectual and cultural institutions. It may be lifted to allow other activities, too. The justification of non-intervention policies is that they enable people to make the kind of choices required for the cultivation of individuality. But often these choices cannot be made because of absence of opportunity. Just as poverty may prevent a person from receiving an education, so it may prevent him from receiving necessary medical treatment. Mill, thus, argues that the state may provide medical facilities such as public hospitals. Indeed, it is the role of the state to expand individual freedom by providing the individual with all the necessary facilities, and, generally, increasing the options available to him.

Educational, health and certain material conditions are prerequisites for the cultivation of individuality, and the government is justified in intervening to provide these conditions where no private agency can or will do so.

In the particular circumstances of a given age or nation, there is scarcely anything really important to the general interest which it may not be desirable that the government should take upon itself, not because private individuals cannot effectively perform it, but because they will not.⁵³

It is clear, then, that Mill believes that civilised governments should ensure their citizens' material well-being as well as ensuring them extensive freedom and educational opportunities. In this way, Mill's principle of "laissez-faire" is very unlike the classical, orthodox principle. Mill does not abandon over the years his idea of the great

benefit society. He still believes that a good government "helps" and benefits people by providing them with the conditions to become "progressive beings". Utilitarianism, Chapters on Socialism, and the Principles recognise that if basic physical needs are not met, men cannot achieve any kind of happiness, let alone the true happiness of exercising their higher faculties. In Books 4 and 5 of the Principles, Mill urges government measures to ensure all individuals the material pre-requisites for cultivating their powers. He suggests, for example, a social minimum to be paid for out of taxation. It is this topic of the distribution of wealth and property that we must now consider.

3. The Institution of Private Property

3.1 Private Property in Principle and Practice

Poverty is clearly a constraint upon the cultivation of individuality. But the problem of poverty remains insoluble only if it is regarded as inevitable, as part of "human destiny". Mill does not regard it in this light. He begins his discussion of the distribution of wealth by making his well-known distinction between the laws of production and the laws of distribution.

The laws and conditions of the production of wealth partake of the character of physical truths. There is nothing optional or arbitrary in them ... It is not so with the distribution of wealth. That is a matter of human institutions solely. The things once there, mankind, individually or collectively, can do with them as they like.⁵⁴

Past political economists had assumed that both production and distribution were determined by immutable laws. Breaking with this tradition, Mill makes a distinction between production and distribution. Although he recognises that technological innovations can transform the mode of production, markedly increasing production, he accepts it as an economic fact that the extent of available natural resources and the mode of production in any particular stage of society will always limit the productive capacity. But, in the realm of distribution, he denies the determining force of physical factors; unlike his predecessors, he emphasises the distinctively malleable qualities of the "laws" of distribution.

The distribution of wealth, therefore, depends on the laws and customs of society. The rules by which it is determined, are what the opinions and feelings of the ruling portion of the community make them, and are very different in different ages and countries; and might be still more different if mankind so chose.⁵⁵

Now, it is, of course, possible that the "ruling portion of the community" could act in accordance with the interests of all, but Mill argues that in practice this has not happened, and poverty and penury for many has been the result. The free market, sanctioned by the ruling portion of the community does not operate to the advantage of all. Mill sees the difficulty of reforming entrenched property relations through non-violent means. Nevertheless, he proceeds to analyse the distribution of wealth as it derives from social relationships which he characterises as "provisional" in order to argue for the necessity of adopting a series of major reforms appropriate to the kind of society in which all would have an opportunity to cultivate their individuality.

It seems to be Mill's view that two distinct rights are violated by the operation of a free market:

1. The Right to the Fruits of one's Labour and
2. The Right to Cultivate one's Individuality.

I shall treat each separately.

The Right to the Fruits of one's Labours

Since the human race has no means of enjoyable existence, or of existence at all, but what it derives from its own labour and abstinence, there would be no ground for complaint against society, if everyone who was willing to undergo a fair share of this labour and abstinence could attain a fair share of the fruit.⁵⁶

Mill argues that some inequality of wealth is justifiable since people have varying degrees of talent and motivation⁵⁷. Moreover, the distinction between capitalists who own capital and labourers who sell their labour for a wage, is an acceptable feature of a system of private property since thrift and abstinence are practised by some individuals and families and not by others. Consequently, the only legitimate criticism of a system of social relations based upon private property is that the distribution is not proportionate to the labour, past and present.

This is, in fact, Mill's major criticism of the capitalism of his day. According to this standard, the nineteenth-century English system of distribution is completely unjustifiable. In the Principles, Mill makes his famous statement that Communism with all its problems would be an improvement over the injustices of the present system of private property⁵⁸. In the Chapters on Socialism, his indictment is even harsher, and he directs his remarks to those who would try to justify the plight of the poor.

The reward, instead of being proportionate to the labour and abstinence of the individual is almost in an inverse ratio to it; those who receive the least, labour and abstain the most. Even the idle, reckless and ill-conducted poor, those who are said with justice to have themselves to blame for their condition, often undergo much more and severer labour, not only than those who are born to pecuniary independence, but than almost any of the more highly remunerated of those who earn their subsistence; and even the inadequate self-control exercised by the industrious poor costs them more sacrifice and more effort than is almost ever required from the more favoured members of society.⁵⁹

It is clear that Mill makes no attempt to justify the unreformed capitalism of his day. The indictment quoted above is significant for it reveals great sympathy for the position of poor people who struggle and achieve little in a social system they do not control, and it argues that they sacrifice even more than those who abstain from pleasure in order to acquire capital. In Mill's early writings he makes the assumption that capital is acquired through hard work and abstinence. Later he rejects this assumption entirely, arguing that the unreformed capitalism of his day shows no relation between success and merit, past or present.

The very idea of distributive justice or of any proportionality between success and merit, or between success and exertion is, in the present state of society, so manifestly chimerical as to be relegated to the regions of romance.⁶⁰

Mill, of course, was not the first to argue that in a just social system, rewards should balance merit or effort, and that in the English capitalist system such an equitable principle was not met. His thoughts echo Adam Smith's:

While it is the division of labour which makes a country rich, these riches are not evenly divided ... The division of opulence is not according to the work. ... He who as it were bears the burden of society, has the fewest advantages.⁶¹

Mill writes:

Private property, in every defence made of it, is supposed to mean, the guarantee to individuals of the fruits of their

own labour and abstinence. The guarantee to them of the labour and abstinence of others transmitted to them without any merit or exertion of their own, is not of the essence of the institution, but a mere incidental consequence, which when it reaches a certain height, does not promote but conflicts with, the ends which render private property legitimate.⁶²

and he notes:

The institution of property, when limited to its essential elements, consists in the recognition, in each person, of a right to the exclusive disposal of what he or she has produced by their own exertions ...⁶³

Thus, private property is governed by the "equitable principle": remuneration in proportion to exertion. According to this principle, each individual is to receive produce (remuneration) in proportion to the amount of work he contributes to the production of an object through the use of his own labour (exertion). It is from the equitable principle and its implications of full authority over the disposal of the product that private property gains its essential meaning: that all people are guaranteed not only "the fruits of their own labour and abstinence" but also exclusive disposal of such "fruits" or property. Private property, then, has two original essential elements which designate its private nature: each individual is entitled to receive whatever he produces himself as a result of his own labour, and derived from that entitlement, can do whatever he chooses with that product (that is, the individual has the right to dispose of it freely).

It can be seen that Mill's ideas about property are in line with previous liberal thought such as that of Locke, Reid, and Hutcheson. Property derives from labour. In Locke's theory, as a result of mixing one's labour with an external object, that object becomes one's legitimate property: one has a right to it. For Reid too, "justice" requires that the "fruits" of everyone's "innocent labours" or "exertions" be secured to him⁶⁴. Mill emphasises the concept of desert or merit - the grounds of the desert or merit being the effort or exertion involved in the labour. Thus, labouring on an object makes the object, or part thereof, the individual's in proportion to the amount of labour exerted. The equitable principle is a principle of proportion, of reciprocity. Hutcheson similarly argues that "where the goods or labours of other persons have contributed to any increase or improvement, all those who have contributed by their labour or goods have a joint property in the compound, or in the fruits and improvements, each in proportion to the value of what he contributed"⁶⁵. Locke also

argues that the fruits of an individual's exertions belong in justice to that person. To let someone have the "benefits of another's pains" is clearly unjust. Labour is often unpleasant and arduous. Thus, those who are willing to make the sacrifice of time and mental and physical exertion must reap the concomitant benefits.

Mill strongly disapproves of the situation in which labourers work for employers who give remuneration which bears no relation to the labourer's efforts. So also does Hutcheson. "The labours of any person of tolerable strength and sagacity are of much more value than his bare maintenance. We see that the generality of healthy people can afford a good share of the profits of their labours for the support of a young family, and even for pleasure and gaiety. If a (worker or) servant obliged himself by contract to perpetual labours for no other compensation than his bare maintenance, the contract is plainly unequal and unjust"⁶⁶. Locke, of course, also condemns as unjust employment contracts made under economic duress, where an individual is "forced" through "necessity" to accept whatever pittance is offered in order to live. Such a contract or "offer", he says, amounts to vassalage or slavery⁶⁷.

The equitable principle and the derived right of exclusive disposal comprise the pure or "ideal" form of the system. But the institution in its "ideal" form "has never yet had a fair trial in any country"; at the present time, people are rewarded disproportionately to effort and exertion. For Mill, it is from the illicit use of the institution of private property that injustices arise, not from any element inherent in the system. Mill, then does not ignore the connection between the existence of private property and the existence of injustice and inequality, but, generally, and in keeping with liberal tradition, he denies that there is a direct connection. Rather, he argues, that the institution has been misused and its principles perverted.

Mill's account of property is, however, not as simple as it may first appear. He gives another definition which appears to conflict with the one we have just examined. We have seen that he distinguishes between what is "essential" and what is "incidental" to the institution. It is essential that one be guaranteed the fruits of one's own labour and abstinence. It is incidental that one be guaranteed the "fruits of the labour and abstinence of others transmitted to one without any

merit or exertion of one's own", (that is, transmitted to one by gift or contract). But, in the second, "extended" definition of property (part of which we quoted before) Mill writes:

The institution of property when limited to its essential elements, consists in the recognition, in each person, of a right to the exclusive disposal of what he or she have produced by their own exertions, or received either by gift or by fair agreement, without force or fraud, from those who produc'd it.⁶⁸

In this second definition of private property, those "incidental consequences" of the institution become incorporated into the "essence" of the institution. The right of exclusive disposal is essential to the institution of property in the case of goods produced by oneself, and in the case of goods produced by others (and transferred to one without force or fraud) yet these goods produced by others are "not of the essence of the institution, but are mere incidental consequences of it". In respect of the right of disposal, both essential and incidental property have the same status.

Mill has already admitted that the uneven accumulation of wealth is a major cause of injustice and poverty⁶⁹. Could it not, therefore, be argued that it is the extension of the original principle that is the root of the injustice which exists since it permits individuals to increase their wealth at the expense of others' economic status (by contract) or simply by a specific association with others (by gift). Yet Mill defends this extension as implicit in the right of exclusive disposal. Mill advocates returning private property to the original (labour exertion) principle as a means by which injustice can be remedied. But how could this occur if private property consists essentially (by definition) in those elements which are responsible for the injustice? We shall see (3.3) that Mill escapes or attempts to escape from this "injustice dilemma" by distinguishing between the right to dispose (of property) and the right to receive (property). He claims that while there is an absolute or exclusive right of disposal of property by the owner, there is no correlative right on the recipient's part to receive it all. While A_1 has the right to will all his property to A_2 , A_2 has no right to receive all that property.

The Right to Cultivate one's Individuality

According to Mill, there is no necessary connection between "exploitation" and extensive private property. When workers are paid less than their contribution or exertion, they are exploited, but this exploitation arises from a contingent imbalance between the bargaining position of employer and worker, resulting mainly from the oversupply of labour. The worker is not exploited simply because he must sell his labour to someone. If B sells his labour to A who pays him according to his contribution, B has been treated equitably, and has not been exploited. Thus, the right to the fruits of one's labour is not necessarily violated by a market in labour.

It is clear, though, that Mill is highly critical of the existence of the wage relationship or contract. I think it is Mill's view that while the labour contract does not necessarily violate the right of the worker to the fruits of his labour, it does necessarily violate the right of the worker to cultivate his individuality. Having little real choice of occupation or habitation, being dependent on the will of others (especially his employer) he is as unfree as he possibly could be "on any system short of actual slavery". Mill makes it clear that he sees the worker-employer relationship as essentially one of dependence where the former is subjected to "fixed rules" and is dependent on the will of others. He further attributes apathy and lack of interest in work, the stunting of initiative and the smothering of spontaneity, and the general desuetude of human powers and capacities fundamentally to the absence of self-direction in labour. The wage relationship or market in producers implies subservience and lack of self-direction. It violates the right of the worker to cultivate his individuality.

In Mill's account, there is a distinction between a market in producers and a market in products. This distinction in no way reflects the more general distinction between the realm of production and the realm of distribution. Both the distribution (ownership) of the means of production and the distribution of products are part of the sphere of distribution and, as such, they are amenable to control and alteration. So, it is possible to institute reforms to eliminate the owner-worker relation just as it is possible to eliminate or alter the market as the method of distributing commodities. Mill's position is that the market in products is generally desirable and efficient and should,

therefore, be retained, while the market in producers should be eliminated because it violates the right of workers to cultivate their individuality.

We have seen that Mill criticises the Capitalism of his day on two accounts:

1. It violates the right to retain the fruits of one's labour.
2. It violates the right to cultivate individuality.

Both these rights are of key importance to Mill and we shall see shortly that he incorporates both into his reformed system of private property. But before investigating Mill's conception of a just system of private property, we must look at his account of land which he sees as being of particular importance.

3.2 Private Property in Land

The manner in which Mill views the relationship between ownership and self-direction is perhaps most clearly exhibited in his discussion of the land problem. His discussion is helpful in enabling us to see how important he considers the control of natural resources to be, what he considers the conditions of control, and where he places the concept of private property in his hierarchy of values.

According to Mill, the legitimacy of private accumulation of land can be questioned without questioning the right of private property as such.

In this age, when everything is called into question, and when the foundation of private property itself needs to be argumentatively maintained against plausible and persuasive sophisms, one may easily see the danger of mixing up what is not really tenable with what is; and the impossibility of maintaining an absolute right in an individual to unrestricted control, a jus utendi et abutendi over an unlimited quantity of the globe, to which every other person could originally make out as good a natural title as himself.

Mill derives his conception of property in land from Coleridge. He writes that Coleridge's greatest service was to revive the idea of trust in land. According to this idea, land is:

The gift of nature, the source of substance to all, and the foundation of everything that influences our physical well-being ... it cannot be considered a subject of property in the same absolute sense in which men are deemed proprietors of that in which no one has any interest but themselves, ... that which they have actually called into existence by their own bodily exertion.⁷⁰

and

We agree fully with Mr. Newman in the doctrine that there can be, morally speaking, only a qualified property in things not produced by labour such as the raw material of the Earth. We might go further and say that there is only a qualified property in anything not made by the individual's own labour.⁷¹

According to Mill, land is for the purpose of the general good, and all individuals should be allowed to enjoy it. His contention is that ownership of the land (just because the land is not produced by labour) should be viewed as conditional and not absolute. No person made the land; it represents the common inheritance of the whole species. As a result:

It is some hardship to be born into the world, and to find all nature's gifts previously engrossed, and no place left for the newcomer.⁷²

We have seen that, for Mill, the concept of private property in its most essential sense applies only to those items which are produced by labour exertion. But the land has not been produced by labour exertion on anybody's part. Thus, it would seem, that if there is to be private ownership of land in any degree, a different ethical justification will be required. Mill notes that:

Wherever might has not been accepted as sufficient basis of right, the justification of private property in land has rested on the theory that most is made of the land for the good of the community by giving that full play for the stimulus of self-interest which is given by private ownership.⁷³

When people are excluded from the use of that which is the common inheritance of them all, that exclusion can only be justified if it is ultimately for their benefit. The production of large quantities of food, and other necessary material goods, is clearly to the benefit of all and would, therefore, afford a justification. The justification for the private ownership of land, Mill explains, is that it is most conducive to making land yield "the largest amount of food, and other necessary and useful things" needed by the community⁷⁴. Such production requires labour and labour exertion and is most effectively motivated by self-interest.

Mill clearly states that if the owner of land does nothing to improve it, he should be deprived of the ownership⁷⁵. There should be no private property in land when the reason for private property in land stops. "Where the land is not intended to be cultivated, no good reason can in general be given for its being private property at all". Whereas the legitimacy of private property in moveables is found in

the equitable principle itself (labour exertion) and is, accordingly, taken for granted, private property in land requires an external justification, that of "positive good or improvement"⁷⁶. The significance of the "positive good" condition is more readily apparent when it is realised that the condition underlying other private property is a negative one: exclusive ownership must not result in positive evil, although it is quite acceptable if its effects are morally neutral⁷⁷. By contrast, property in land cannot merely exist in private hands; it must exist for a beneficial purpose. While an individual may legitimately own goods for the pleasure of ownership per se, the owner of land must justify his ownership by making the land productive.

Mill, in fact, could be criticised for failing to remain true to his "positive good" condition, more specifically for reducing it to a "no loss" requirement. He notes that if a landowner does not intend to cultivate his land, "he ought to know that he holds it by sufferance of the community, and on an implied condition that his ownership, since it cannot possibly do them any good, at least shall not deprive them of any, which could have been derived from the land if it had been unappropriated"⁷⁸. In this case, the individual is, in fact, holding the land without fulfilling what originally appeared to be a necessary condition of private ownership of land. Mill has weakened his condition from insisting that private ownership of land must result in positive good if it is to be justified or tolerated, to allowing it as long as it does not result in loss or harm.

Mill is aware that this condition of improvement or benefit in respect of land is often not met. "Landed property in England is thus very far from completely fulfilling the conditions which render its existence economically justifiable"⁷⁹. And private property in land, according to Mill, must be justified economically before it can be justified morally. Thus, individual landed property in England far from fulfils the conditions which render its existence ethically justifiable.

Mill's discussion is not intended to encourage the nationalisation and confiscation of land for redistribution to the poor. He hopes that he will not be suspected of recommending a "general resumption of landed possessions, or the depriving anyone, without compensation

of anything which the law gives him"⁸⁰. But he does mean to defend the right of the government to place restrictions on land ownership for "when the state allows anyone to exercise authority over more land than suffices to raise by his own labour his subsistence and that of his family, it confers on him power over other human beings ... power that affects them in their most vital interests"⁸¹. The freedom to own private property should be limited by the state insofar as it can be shown that such freedom would result in an abuse of the rights of citizens. According to Mill, "no notion of private property can bar the right which the state inherently possesses to require that the power which it has so given shall not be abused"⁸².

Mill's attitude towards private property in land is thus based on the facts and needs of human life. He, like Locke and Spencer whom we quoted in Chapter 1, argues that if some individuals are permitted unlimited ownership of land, then other individuals may suffer hardship or even threats to their survival. Mill does not consider all forms of private ownership as the cause of poverty, but he does believe that land monopolies prevent large numbers of individuals from gaining access to the means of survival and improvement. Mill, therefore, argues that the principle of private property cannot always be applied to all situations and all persons because there are times when the needs of some individuals would be denied if the principle were maintained as absolute.

3.3 Reforms: Distribution and Redistribution of Property, Wealth and Income

Mill does not render explicit the relationship between private property and the rest of human life, but it seems clear he believes that the institution of private property is a reflection of, and an influence upon, many aspects of human life and human consciousness. In his essay, Civilisation, he goes as far as to make "diffusion of property" a measure of "civilisation"; a term he uses to specify the higher developments of social life⁸³.

Mill's ideal is not the abolition of private property, but the dispersal of property among as many individuals as possible through reform measures. According to Mill, there is good "in retaining the

institution of private property"⁸⁴, but it is necessary to root out all the inequality and injustice in the present system. Mill thus affirms the institution of private property in the sense of that term which implies wide dispersal of ownership in the community, and he rejects the institution insofar as it means the right of any individual or group to possess as much and in whatever way they please, irrespective of the needs of other members of the community. Like Locke and Reid, he thus rejects what may be called the traditional or orthodox conception of private property - that espoused by philosophers such as Filmer and Hume. According to that conception, private property is an inviolable and absolute right of individuals and groups, and the government has no right to regulate property at all even when the needs of some members of the society are left unmet. Mill, in contrast, argues that the

Society is fully entitled to abrogate or alter any particular right of property which in sufficient consideration it judges to stand in the way of the public good.⁸⁵

Absolute and inviolable property rights give some men excessive power over others, thereby damaging "their most vital interests" in the sense that they are prevented from gaining access to the means which are in part requisite to cultivate their individuality. Mill, as we have seen, argues for a "great benefit society" and rejects the principle of laissez-faire and the "nightwatchman state".

As Mill's ideal is the wide diffusion of property in society, he does not recommend the overall transformation of property relations, or the general confiscation of property as do some of his more radical contemporaries. Mill recommends reform measures varying in affinity with non-Marxist forms of Socialism, but all quite compatible with private property in a more modified or restrained form. These reforms include limits on inheritance, land reform, the introduction and extension of co-operatives. The reforms share the facility of being part of a system of private property or are, at least, able to exist in conjunction with it.

Bequest and Inheritance

Mill criticises the contemporary rules of distribution for failing to make a distinction between bequest and inheritance. According to Mill, only bequest is an essential aspect of a principle of private property because:

The ownership of a thing cannot be looked upon as complete without the power of bestowing it, at death or during life, at the owner's pleasure ...⁸⁶

In contrast, inheritance is a non-essential aspect which evolved as a common practice of a particular social system which no longer exists; severed from its historical roots, inheritance loses its rationale⁸⁷. Mill, as we have seen, writes that ownership implies the right of disposal of that which is owned, that full authority over the disposal of the goods is essential to the meaning of "ownership". But we have also seen that he makes no claim that a right of recipience always correlates with the right of disposal.

By separating bequest and inheritance, Mill intends to underscore the fact that the principle of private property should not be used to legitimise the accumulation through inheritance of large individual fortunes of land and/or capital. The right to unlimited inherited wealth creates too much of an advantage for the few against the many:

If it may be said, as it may with truth, that those who have inherited the savings of others have an advantage which they may have in no way deserved, over the industrious whose predecessors have not left them anything; I not only admit, but strenuously contend, that this unearned advantage should be curtailed as much as is consistent with justice to those who thought fit to dispose of their savings by giving them to their ^sdecendents.⁸⁸

Mill, therefore, advocates adopting a limitation on inherited wealth. He argues that "no person should be permitted to acquire by inheritance, more than the amount of a moderate independence"⁸⁹.

The consequences of this position are far-reaching. In arguing for the establishment of an absolute limit on allowable inherited wealth, Mill is going far beyond his early attack on primogeniture, for he is calling for a fundamental restructuring of property relationships. Moreover his reform applies to the accumulation of capital as well as land. In his early writings, he takes it for granted that the present-day capitalist was probably aided by inheritance laws. He justifies this headstart by labelling it past labour or past abstinence. Since capital, according to the theory, is the result of labour plus abstinence, the prospering capitalist is a person who abstains and who probably comes from a family of abstainers. Later, Mill changes his mind. He argues that many commercial fortunes have been built up, even if only partially, "by practices which in a

better society would have been impossible" (such as jobbing or making use of public position), "or perhaps only by the manifold advantages which imperfect institutions gave to those who are already rich, over their poorer fellow-citizens, in the general struggles of life".⁹⁰ Mill thus challenges the legitimacy of capital fortunes as well as those based on land. He writes that if his principles become the adopted practice of society, the capitalist would be deprived of his "unearned advantage" over the labourer. As a result, everyone would start the economic race on an equal footing. Indeed, Mill believes that, if established as law, his notions about bequest and inheritance, "would pull down all large fortunes in two generations"⁹¹

It should be noted that Mill's solution to the "injustice dilemma" seems odd and unsatisfactory. He wants to maintain that while there is an exclusive or full power or right of disposal of property (i.e. property gained both by gift and one's own exertion) there is no correlative right on the recipient's part to receive it all. While A_1 has the right to will all his property to A_2 , A_2 has no right to inherit all that property. It would appear to be better to deny A_1 's absolute power of disposal over what he has "at death or during life" - and maintain instead that he has a qualified or limited right of disposal correlating with a similarly qualified or limited right on the part of A_2 to receive or inherit from him.

Landed Property Reform

While Mill does not consider all forms of private ownership as the cause of poverty, he does believe that land monopoly in particular prevents large numbers of individuals from gaining access to the means of survival and benefit. Such a situation is clearly unjust, for Mill, as we have seen, adopts a neo-natural law position, the key idea of which is that the land is given by nature to all human beings for their survival and benefit. The chief beneficiaries of the present distribution, Mill argues, are the landed proprietors; those who fare worst under it are the labouring classes. Mill thus asserts that the major consideration in land reform should be the maximisation of benefits for the labouring classes. The reforms he proposes or supports have this end in view⁹².

Mill, as a member of the Land Tenure Reform Association, supports the Ten-point Programme which includes many controversial policies. Its

fourth clause calls for the taxation of the "future unearned increase of the rent of land"⁹³. Points five and six outline the role of the state in purchasing land which comes on to the market, in order to let it to "small cultivators" and spontaneous co-operative experiments. The last four points deal with land owned by public bodies, waste lands, and with areas of natural beauty, historical and/or scientific significance. In all these areas the state is given the right to intervene, either by halting the further creation of private property or by purchasing from the owner the land, as in the case of natural resources. After preventing any future enclosures and sale of endowments, the state can utilise the land, either by letting it for cultivation or for improved working class dwellings⁹⁴.

Many of the points are controversial but they are compatible with Mill's theoretical formulations. The special tax on the landlord is justified by the argument that the landowner who does not improve the land should not benefit from the increased value which accrues as a result of increased population. The idea that there should be prohibition on further appropriation of current common lands is, of course, justified by the neo-natural law assumption that land is for the benefit of all, and not for the few. It is time to end the use of the land for the "proprietor class" - the few - and to establish it in the interests of the great number who have never benefited from it.

Land should be utilised by and for the benefit of the whole community. But land acquired by the state should not be nationalised for government control would not be the same as control by the community⁹⁵. In a letter to Campbell⁹⁶, he points out that nationalisation programmes are useless if the individuals controlling them are unfit and would use their positions to further their own ends. Instead he advocates small proprietorships with long leases. By such "peasant" or small proprietorships, the ownership of land can be distributed through a more diffused group of people. Mill is anxious to raise a "class of small proprietors" similar to the peasantry in France who impressed him greatly by their prudence, foresight, cautious efficiency and by the manner in which they subordinated all their efforts and took all the necessary means to look after their property. The cares and responsibilities of private proprietorship, he says, develop qualities of character and "train the intelligence" and "stimulate mental activity"⁹⁸. Whereas the day labourer has "anxieties" which have a

destructive, not an "invigorating effect on the mind",

The position of the peasant proprietor in Europe is the reverse. His anxieties are the ordinary vicissitudes of more or less; his cares are that he takes his fair share of the business of life, that he is a free human being, and not perpetually a child, which seems to be the approved condition of the labouring classes according to the prevailing philanthropy. He is no longer a being of a different order from the middle classes; he has pursuits and objects like those which occupy them ... If there is a first principle of intellectual education, it is this - that the discipline which does good to the mind is that in which the mind is active, not that in which it is passive. The secret for developing the faculties is to give them much to do, and much inducement to do it.

By such a system of small proprietorships, land is given to people who need it, and, further, it enables such people to take control of their lives and develop those qualities of intellect and character that are essential to individuality. Also the peasant proprietor system is a just one for it enables workers to reap the benefits of their labours. Reward is proportional to effort and exertion. Peasant proprietorships, like their industrial corollaries, partnerships and co-operatives (see below) make possible the satisfaction of two important rights: (1) the right to cultivate individuality and (2) the right to the fruits of one's labours.

Taxation and the Provision of a Social Minimum

Mill rejects a policy of confiscation and nationalisation of land as a means to remedy injustice. In fact, he vigorously attacks "all schemes for the confiscation of private property in any shape or under any pretext"⁹⁹, whether this private property be in the form of land or capital. This does not mean, however, that he also rejects a system of taxation. We have seen that he proposes and supports an inheritance tax of a scope that leaves individuals with only a "moderate independence" and also a tax on the increase of land value. But Mill's ideas on taxation do not stop here. In various articles, he sets forth his ideas as to how a tax system could work to better the condition of the poor. He favours a revision of the English tax system in order to increase the taxes of the rich¹⁰⁰. In this regard, he suggests that it would be better to tax "the incomes which persons in business derive from their stock in trade, at a lower percentage than those of the landowner, the fundholder, and other persons who can live in idleness, and whose income is not liable to vary"¹⁰¹. He then outlines what he believes to be the most desirable tax system:

Our plan ... would be, to relieve the smaller incomes from direct taxation entirely, up to the income which might be deemed fully sufficient to satisfy those physical wants of a human being which are independent of habit and convention: to keep off hunger and cold, and to provide for old age, and for the ordinary chances of sickness, or other inability to work. Having fixed this minimum for entire exemption, we would tax all permanent incomes exceeding this, in exact proportion to the excess ... This kind of graduated property tax appears to us to be just, and no other.¹⁰²

Mill believes that a reformed tax system can be used to alleviate poverty in two ways. First, the poverty of the low-paid can be eased by exempting them entirely from income tax. Secondly, the poverty of the unemployed or those physically unable to work can be eased by the provision of a social minimum paid for out of some of the income tax taken from the wealthier members of society. The poor, he argues, are taxed disproportionately, but if the tax system were reformed along the lines suggested above, this inequality would be removed. "Income required to maintain life, health, and absence of bodily pain ought not to be taxed"¹⁰³. Mill's suggestion of tax exemption on incomes below £100-150 p.a. would have exempted half the working class from payment of income tax¹⁰⁴.

The second way in which taxation can be used to alleviate poverty is to use the revenue from taxation to help those who are unemployed or physically unable to work. Losman points out that Mill "acknowledges the duty of the state to provide aid to those citizens who find themselves destitute"¹⁰⁵. However, it should be pointed out that this statement is rather deceptive for the public aid Mill endorses is the dreaded Poor Law¹⁰⁶. Thus, while it is true that he supports the idea his stance towards poor relief is rather harsh, and moreover, totally out of character with his conception of the cultivation of individuality and the "great benefit society". His harsh attitude towards welfare and poor relief may, I think, be explained by his unquestioning adherence to Malthus' theory which holds that population tends to increase faster than the means of subsistence can be increased, so that poverty is inevitable. He argues that the key to prosperity lies in controlling the population but that such restraint is not usually forthcoming. He rejects the idea of a social minimum on easy terms because he believes that in the long-term this will only serve to impoverish more members of society. It is for this reason

that he believes in giving relief on relatively harsh terms¹⁰⁷. In the Claims of Labour, for example, he writes that "the higher and middle classes ought to be willing to submit to a very considerable sacrifice of their own means, for improving the conditions of the existing generation of labourers". It is, however, hardly reasonable to expect such sacrifice if it results in greater poverty "in the generation to come"¹⁰⁸.

Mill's views on the provision of a social minimum are clearly not in keeping with his views on human nature and his conception of a good society. If Mill had not subscribed to Malthus's doctrine of over-population and resulting poverty, it is most likely that he would have had very different views on the subject. He does, in fact, provide some fairly clear indications of what his position might have been, and they are, as we might expect, much more in keeping with his conception of man as a "progressive being", and with his conception of the good society. In an article in the Examiner, for example, Mill generally supports the principle that society ought to provide for those who cannot provide for themselves. "The principle of securing by a legal provision the actual necessities of life and health to all who cannot otherwise obtain them, we consider as now placed out of the reach of dispute by an unprejudiced person"¹⁰⁹. Also, he makes no criticism at all of the Fourierist provision of a social minimum (see next section), and he further argues that human beings ought to help one another. "The claim to help, therefore, created by destitution, is one of the strongest that can exist; and there is prima facie the amplest reason for making the relief of so extreme an exigency as certain to those who require it as by any arrangements of society can be made"¹¹⁰.

Mill's view, then, is that, in principle, it is the duty of society to ensure that the needs of all its members are met. Such a view, he argues, is "beyond dispute". And, clearly, it is a view that is in keeping with his overall position. However, his acceptance of certain theories (which, incidentally, he does not defend) leads him to adopt harsh solutions to the problem of poverty which do not fit well with his conception of the good life for all men.

Partnerships and Cooperatives

The partnerships and cooperatives Mill envisages may be considered not so much as an alternative to the institution of private property, but as a reform within the institution, designed to make it more equitable and just. They are the industrial corollary to peasant proprietorships. Initially, such organisations exist alongside traditional capitalist enterprises. Mill explains that:

The relation of masters and workpeople will be gradually superseded by partnerships in one of two forms: in some cases, association of the labourers with the capitalists; in others and perhaps finally in all, association of labourers among themselves.¹¹¹

Mill, as Gray observes, believes in the "mutability of all forms of social life". He believes that "at some distant date", the chief means for improving the relations between employer and employee will be that of "raising the labourer from a receiver of hire - a mere bought instrument in the work of production, having no residuary interest in the work itself - to the position of being some sort of partner in it". In partnerships, Mill sees:

the only or the most practicable means of humanizing the 'rights of industry' and those of property; of making the employers the real chiefs of the people, leading and guiding them in a work in which they also are interested - a work of cooperation, not of mere hiring and service - and justifying by the superior capacity in which they contribute to the work, the higher remuneration which they receive for their share in it.¹¹²

The role of the industrial partnership is merely transitional and will give rise to a state of industry in which "workpeople as a body will either themselves own the capital, or hire it from the owners". These partnership ventures may become cooperatives after the "chief" either retires or dies.

Thus, partnerships, Mill hopes, will evolve into a higher form of association, the cooperative, which gains his greatest praise, and which would, he asserts, bring "blessings to human society"¹¹³. Mill favours cooperatives because they are based on assumptions of equality:

The form of association, however, which if mankind continue to improve, must be expected in the end to predominate is not that which can exist between capitalist as chief and workpeople without a voice in the management, but the association of the labourers themselves on terms of equality, collectively owning capital with which they carry on their operations, and working under managers elected and removable by themselves.¹¹⁴

Mill has high hopes for the salutary effects of the cooperative movement, believing it to be the foremost means of establishing better conditions for the workers, and greater harmony between employers and employees. The only thing, he writes, which can entirely remove the antagonism between labourers and employers is cooperation¹¹⁵.

Eventually, Mill hypothesises, the cooperative movement will assume the predominant position in the economic system of production and distribution.

When, however, cooperative societies shall have sufficiently multiplied, it is not probable that any but the least valuable workpeople will any longer consent to work all their lives for wages merely; both private capitalists and associations will gradually find it necessary to make the entire body of labourers participate in the profits.¹¹⁶

The demise of the role of the individual capitalist would be an evolutionary process. Mill optimistically assumes that, as associations absorbed nearly all the workers, capitalists would find it advantageous to lend their capital at a diminishing rate of interest, with the consequence that finally, "the existing accumulation of capital might honestly and by a kind of spontaneous process, become, in the end, the just property of all who participate in their productive employment". This "transformation" would "be the nearest approach to social justice, and the most beneficial ordering of industrial affairs for the universal good, which it is possible at present to foresee"¹¹⁷.

Thus, for Mill, "cooperative associationism", a form of socioeconomic organisation according to which the workers or producers are also owners who collectively share in the fruits of their work is the concrete manifestation of the true ideal of human society. He calls the cooperative ideal his utopia¹¹⁸. Specifically, he distinguishes the "material" and the "spiritual" benefits of cooperatives.

The chief material benefits are (i) greater diffusion of wealth and (ii) greater productivity. Cooperatives may be seen as an important part of a socially just society for the wealth, instead of being concentrated in the hands of the few, is widely diffused. Further, in the cooperatives, people are paid according to labour exertion,

that is, according to the equitable principle of desert. Mill also argues that productivity would greatly increase thereby increasing the total wealth of the nation¹¹⁹. His argument is that, because workers share in the profits, the connection between labour exertion and reward is stronger in a cooperative system than in a traditional capitalist enterprise or, indeed, under communism, neither of which achieve such reciprocity. Thus, the workers, instead of giving "the least work for their remuneration" would "do their utmost"¹²⁰. Co-operatives are, then, not only more socially just in that they achieve a greater diffusion of property and adhere closely to the principle of desert; they also have a utilitarian value in that they provide a much needed incentive.

The material benefits, Mill argues, are nothing compared with the "moral revolution"¹²¹ that would result from their implementation. Although Mill does not analyse explicitly the relation between property, the organisation of work and other aspects of social life, his discussions (and his discussions of cooperatives, in particular) imply that he believes property and labour relations to be both a reflection and an influence upon other aspects of human life, human consciousness and human nature. It is possible to identify at least three aspects of the "moral revolution" that relate directly to the development of human consciousness and human nature.

First, there are the advantages to be gained from democracy in the workplace. In the form of cooperatives that Mill recommends and foresees, ownership and control is also a function of the association or collective of workers. The labourers qua owners decide what to produce, the conditions of work and they share the profits of their work. Being able to participate in industrial decisions, Mill argues, would convert "each human being's daily occupation into a school of social sympathies and practical intelligence"¹²². For Mill, cooperative associationism is the ultimate ideal form of social organisation because it enables all individuals to realise themselves as persons through a process involving the use and development of mental as well as physical faculties in the activity of decision-making and choice. It facilitates the cultivation of individuality.

Secondly, Mill believes that an economy constituted by cooperatives would promote "social solidarity" by the "healing of the standing feud

between capital and labour; the transformation of human life from a conflict of classes struggling for opposite interests to a friendly rivalry in the pursuit of a common good to all"¹²³. The reason the feud would be healed, of course, is that the class of capitalists would disappear as worker cooperatives came to dominate the economy. Thus, Mill strongly endorses a society without marked class divisions¹²⁴. Class divisions, he argues, hinder the growth of fellow-feeling; a more equal society (one without clearly defined strata) would encourage the development of men's social natures.

Thirdly, Mill argues that worker cooperatives would sow the seeds for a new sense of security in the labouring classes¹²⁵. The security would, one would guess, stem from the difference in priorities of a worker-managed enterprise. They would aim, for example, to avoid frequent layoffs and to make financial payments (provide a social minimum) in cases where layoffs were unavoidable.

Mill, therefore, advocates the collective ownership of property while at the same time defending private property. It should be clear now that the two defences are only apparently contradictory. The collective ownership of property that Mill advocates is cooperative associationism and this is not necessarily, at least not in Mill's thought, contrary to the concept of private property. It merely offers an alternative to traditional capitalism. Mill writes of the "fall of profits ... extinguishing the class of small dealers and small producers ... throwing business of all kinds more and more into the hands of large capitalists ... whether these be rich individuals or joint stock companies formed by the aggregation of many small capitals"¹²⁶. In other words, Mill observes that the trends of modern industry indicate "combinations" of property owners growing in power, and consequently as obstacles to the survival of large numbers of small independent owners. It is, therefore, in the name of private property that he defends cooperative associationism; he sees it as a method of restoring possession to people of the necessary means of survival and improvement. We have already noted that, for Mill, "diffusion of property" is a mark of "civilisation", a term that he uses to indicate the higher developments of social existence¹²⁷.

Mill believes that it is only when property is truly "diffused" that men can exercise choice and gain control over their lives. And it

is only when men exercise choice and gain control over their lives that they can cultivate their individuality. He is critical of various forms of Socialism, offered as alternatives to Capitalism that, in reality, deny men such choice and control.

He is critical, first, of "State Socialism". In State Socialism, the state is the potential representative of the people or the "community". Under Capitalism, the State Socialists argue, such representation does not take place. Instead, the government serves the interests of the owning class. But the government can lead the reform to a Socialist society. Under State Socialism, planning would be carried out by administrators and managers for the social good and according to human needs, rather than for "profit". Basic resources and industries would be nationalised as would social services. Collective ownership would be implemented through the vehicle of the state.

Mill points out, first, that big bureaucratic organisations are not necessarily efficient. He writes that people who have a vested interest in a project (that is, those who will directly benefit from the goods and services produced) will usually be the ones best suited to control it. Bureaucrats, however, have no necessary interest in the quality of their administration except as it serves them to gain power, wealth and prestige. But, more importantly, even if the system were efficient, it would still be harmful if it prevented people from directing their own lives and controlling the resources that they need.

It is desirable that it (the control and execution) should be done by them ... as a means to their own mental education, a mode of strengthening their active faculties, exercising their judgment, and giving them a familiar knowledge of the subjects with which they are left to deal.¹²⁸

State Socialism, Mill argues, should not be the system that replaces orthodox Capitalism because it shares with it some major deficiencies; it gives some men "coercive power"¹²⁹ over other men, and by precluding most people from taking active control over their lives and property, it thwarts the cultivation of individuality. It, thus, strips them of freedom, choice, and control of their lives.

Not all forms of Cooperative "Socialism" meet with Mill's approval either, for there are some forms which violate the principle of individual control.

Mill distinguishes "St Simonism" from "Fourierism". St Simonism

Mill says

... does not contemplate an equal, but an unequal division of the produce; it does not propose that all should be occupied alike, but differently, according to their vocation or capacity; the function of each being assigned, like grade in regiment, by the choice of the directing authority, and the remuneration being by salary, proportional to the importance, in the eyes of the authority, of the function itself, and the merits of the person who fulfils it.¹³⁰

Mill does not object that individuals are rewarded differently according to labour exertion or skill, for, as we have noted, he believes in the justice and the utility of this principle. His objection concerns the direction of labour. "It supposes an absolute despotism in the heads of the association; which would probably not be much improved if the depositaries of the despotism ... were varied from time to time according to popular canvas"¹³¹. Such a system, Mill suggests, is only suited to savages¹³²; for men even of relatively modest development, Mill says elsewhere, despotism is stifling to further growth¹³³. Mill adds that the sort of despotism envisaged by St Simonism, that "in which a handful of men weigh everyone in the balance, and give more to one and less to another", would never be tolerated.

"Much more attractive", Mill argues, is Fourierism. "This system does not contemplate the abolition of private property, nor even of inheritance"¹³⁴. For the Fourierists, a community forms a single enterprise, the capital of which is distributed in shares that may be owned unequally; each shareholder receives dividends for use of his capital. In addition, all members of the community receive a social minimum, irrespective of whether they are capable of labour or not. Within each community, the members spontaneously divide themselves into groups, each of which performs a different function. Each member is quite free to participate in more than one group, thus allowing for different kinds of experience and achievements. After deducting subsistence, the rest of the production is distributed proportionately to each group, according to the difficulty of the task. If too many people choose one type of task, then the remuneration would decrease, or, in the undesirable cases, remuneration would increase. Within each group, the distribution of produce would be according to the contribution of capital, labour and talent; the

percentage of the latter would be determined by a vote of the entire group.

Fourierism, then, would keep the tie between effort and reward while honouring freedom of occupation. The Fourierists do not allocate the leadership role of their communities to a non-elected authority who then decide the role and remuneration of each member. Instead, the leaders are elected, and within each occupation group, major distribution decisions are arrived at by the democratic process. Also, the great advantage of the Fourierist system, Mill argues, is that the members decide for themselves the type of task they will perform, thus allowing for a greater amount of freedom of choice than is provided for in the authoritarian St Simonian system. Such a system thus allows individuals choice and control over their lives. Individuals take the major decisions that affect their lives, and this has the benefits that we have already outlined.

4. Conclusion:

The Nature and Status of Property Rights in Mill's Theory

Mill writes that "private property, in every defence made of it, is supposed to mean, the guarantee to individuals of the fruits of their labour and abstinence". In the system of peasant proprietorships and co-operatives he proposes (and also in the more advanced Fourierist cooperative system which he regards as the true ideal for human society) individuals are rewarded according to their labour exertion, that is, according to the principle of desert, and there is also remuneration according to "thrift" or "abstinence". If one refrains from spending and puts one's savings into a co-operative enterprise, one gets a return on the investment. For Mill, the "guarantee to (persons) of the labour and abstinence of others transmitted to them without any merit or exertion of their own is not of the essence of property". Indeed, when it "reaches a certain height" it "conflicts with the ends which make private property legitimate". Thus, in the reforms Mill proposes, there are strict limits on inheritance; individuals may acquire by such means only a "moderate independence".

But it may be asked how secure this property gained through labour, abstinence and limited inheritance is; for Mill writes:

Society is fully entitled to abrogate or alter any particular right of property which, in sufficient consideration, it judges to stand in the way of the public good.

This statement may create the impression that Mill believes that just any sort of public or social expediency can override property rights. It will be recalled that, at the end of the last chapter, it was argued that Hume's merit was to show that entitlements to property grant powers and rights and they cannot, therefore, be disregarded, altered or abolished merely because it may be useful to do so. His mistake was to overrate their importance, to believe they must never be limited or curtailed under any circumstances. Now is Mill the opposite of Hume, according no strength to property rights, prepared to waive them when it is expedient to do so? If this were Mill's view of the status of property rights, it would be very odd for he makes clear that property gives individuals "security" and that this is a justification for it. "Good social arrangements", he says, must not "impair the security of property which is the product and reward of personal exertion"¹³⁵. And he notes that reasonable expectations about property should not be disappointed.

It is clear from Mill's analysis of a right that it is not the kind of moral phenomenon that may be cast aside lightly. For Mill, to have a right is to have a valid claim upon society¹³⁶. Society is the protector of the right and the referent of the claim. "When we call anything a person's right" we mean by that "a valid claim upon society" to "protect the holder in the possession of it". Society (or, more precisely, the state acting for it) is a duty-bearer; it incurs a duty of protection towards the rightholder. Mill speaks of a claim to be "protected"; a claim to have something "guaranteed"; he speaks of "securing something" and of "not allowing hindrance to an activity"¹³⁷. It is clear that if society has a duty to protect, guarantee or secure the rightholder's right, it cannot satisfy or fulfil that obligation by altering or abrogating that right on the grounds of expediency or on minor considerations. Moreover, Mill makes it clear that the validity or sufficiency of the claim (like the worthiness of its protection) is determined by the principle of utility - that is, upon "the permanent interests of man as a

progressive being"¹³⁸, the "development of what is best" in all persons¹³⁹. A valid claim is thus a moral claim. As such, it is a moral force, a demand for action, in and of itself, and for this reason also it cannot be cast aside lightly. Rights protect individuals in the process of development and progressive expansion. They defend personality from unjustified encroachments of other people, and they serve as the basis for positive assertions for room in which to realise personal capacities which might otherwise remain "cramped and warped", "pinched and hidebound".

Rights, for Mill, are a particularly suitable moral (and legal) means for protecting persons' "vital interests" - that is, their self-development and pursuit of individuality - and the justification for recognising and enforcing them lies in this function. Rights are especially suitable because the claims they contain have a peremptory quality not possessed by other appeals to the assistance of society or other individuals. In Mill's words, they are "more absolute"¹⁴⁰ and "of more paramount obligation"¹⁴¹. Rights have a hierarchical precedence not possessed by other claims or considerations. For example, Mill argues that a government "in benefiting particular persons" must be sure "that it is not violating the rights ... of anyone else"¹⁴².

It is clearly Mill's view, then, that rights (the right to property included) cannot be cast aside for simple expediency. They have a peremptory quality and are more absolute than other claims or considerations. However, it is not Mill's view that all rights are absolute or that they are of the same importance. If two rights conflict, they cannot both be guaranteed in full. Nor can they both be ignored if the system of rights is to be preserved. The conflict must be resolved and, for Mill, the principle of utility (the permanent interests of man as a progressive being) is the final arbiter. This role for the principle is a continuing theme in Mill's writings. In his Essay on Bentham he writes: "when two or more secondary principles conflict, then a direct appeal to some first principle becomes necessary"¹⁴³. Thirty years later he writes: "If utility is the ultimate source of moral obligations, utility may be invoked when their demands are incompatible"¹⁴⁴.

Mill gives an example of conflict resolution in his chapter on justice. In certain circumstances, to save someone's life, it may be necessary (even a duty, he says) to steal the required food or medicine "or to kidnap or compel to officiate, the only medical practitioner"¹⁴⁵. Here property rights (and also rights to freedom of action) come into conflict with a right to life and are overridden by it because utility (or the permanent interests of man as a progressive being) requires that the right to life be put before the right to property or freedom of action. It seems that such a conclusion could be reached without appealing directly to the principle of utility - by simply recognising that the right to life is a more fundamental right. Mill seems to leave open this possibility in what he says about appeal to the principle of utility: for he says that in cases of conflict the principle may be invoked.

It is clearly Mill's view that very extensive property rights such as those associated with the free market conflict with the right to cultivate individuality and that the latter right is more fundamental. The right to cultivate individuality can only be satisfied (for all persons in society) where great accumulations of wealth are broken down and property widely diffused throughout society in the form of peasant proprietorships and cooperatives. Mill sees no conflict between the right to cultivate individuality and the right to property which arises through one's labour, abstinence and through limited inheritance. However, it is clear that the right to property gained in this way can conflict with the right to life and that the latter right is more fundamental. Thus, the medical practitioner may be justly compelled to part with his medicine to preserve someone's life. There is no reason to believe that Mill's argument would be different if the medical practitioner had invented the medicine himself and laboured long and hard to find a particular cure. The idea that the right to the material means of life (food, shelter, medical care etc.) is more fundamental than the right to the fruits of one's labours is, of course, also seen in the Fourierist system which Mill advocates.

For Mill, it would be unjust to override the right of one person to protection or to conditions under which individual well-being may be achieved unless doing so is required by a more fundamental protection or a more fundamental condition of well-being. To override an

individual's right (for example his right to property or freedom of action) it is necessary to appeal to "social utilities which are vastly more important, and, therefore, more absolute or imperative, than any others are as a class"¹⁴⁶. But these social utilities are more important because they too involve the vital interests of human beings, and are not the promotion of mere pleasure and convenience. They involve rights and are not simply matters which are at the periphery of a person's existence. Central to Mill's utilitarianism is the idea that only by showing that greater rights are at stake is it possible to infringe the personal rights of an individual. Moreover, where these greater or more fundamental rights are at stake, Mill (like Locke) believes that the weight of the law must be invoked to ensure that they are satisfied. Mill writes:

The principle of securing by a legal provision the actual necessities of life and health to all who cannot otherwise obtain them, we consider as now placed out of the reach of dispute by an unprejudiced person.¹⁴⁷ (My italics)

Locke writes:

Only common charity (i.e. justice see Ch.1) teaches that those should be most taken care of by the law who are least capable of taking care for themselves.¹⁴⁸ (My italics)

1. Chief among those who take this view are C.B. Macpherson, R.P. Wolff, and John Hospers - Macpherson viewing Mill as a proponent of liberal entrepreneurship, and the laissez-faire market economy, and Wolff and Hospers viewing him as a proponent of the minimal, nightwatchman state.

In Democratic Theory, Macpherson argues that two conceptions of man are to be found in liberal theory - (a) the conception of man as "maximiser of utilities" and (b) the conception of man as "maximiser of powers". The first is associated with the early utilitarians such as Bentham and James Mill while the second was only incorporated into liberal thought by J.S. Mill. Macpherson sees Mill's view as the more correct; we should accept "the concept of man as exenter and developer of his own powers" (p.21). To Macpherson, then, J.S. Mill has the right conception of man, but it appears to be his view that Mill chooses the wrong socio-economic system to achieve this - i.e. Mill believes in liberal entrepreneurship and the market system and these are "incompatible" or "inconsistent" with the conception of man as developer of his uniquely human attributes (pp.34-35). They are compatible or consistent only with man as a "maximiser of utilities", as a "bundle of appetites demanding satisfaction" (p.41). In section 3, I shall take up this point and show how Mill proposes to modify the market system in order to make it compatible and consistent with his conception of man.

In Reading Nozick, Wolff attempts to link Mill (and Locke) with Nozick. Nozick, he argues, advocates the "Mill-Locke theory of public and private" (p.85). It will be shown that the libertarian or classical liberal realm of the private is much wider than it is for Mill (or, indeed, for Locke). Disposal of one's property is not, for Mill, a purely private affair as it is for Nozick (see especially sections on taxation and inheritance). Also, for Mill, employment is not purely a matter of contract between employer and employee, as it is for libertarians. Employment does not come only into the realm of the private. Some state regulation is permitted in this and other areas too (see section 2). Both Mill and Nozick, of course, have a realm of the public and private in their theories, but the boundaries are differently drawn.

In Libertarianism, Hospers invokes Mill's name in respect of "the scope of law" i.e. "what laws should be about and why" (pp.20-21). It will be shown that, for Mill, the legitimate sphere of law and state activity are much wider than for libertarians such as Hospers - for example, welfare must be secured by the law.

2. Mill, J.S. On Liberty, Ch.3, pp.116-119.
3. Ibid. p.116.
4. Ibid. pp.116-117.
5. Ibid. p.125.
6. Ibid. p.125.
7. Ibid. p.125.

8. Ibid. p.120.
9. Ibid. p.117.
- 10a. Ibid. p.115.
- 10b. For Mill, plans of life must be fitted to one's nature. Moreover, he believes that plans should aim at the development and perfection of one's nature. R.J. Halliday distinguishes these two senses of individuality (as well as a third) in his book: John Stuart Mill, 1976, pp.121-124. For other discussions of individuality, see articles by Jordan, Ladenson, Lukes, Morgan, Swart and Talbot, all listed in the bibliography.
11. On Liberty, p.133.
12. Mill, J.S. Utilitarianism, Ch.2, p.10. See also p.9.
13. Mill, J.S. Bentham, in Westminster Review, Vol.XXIX, August 1838.
14. On Liberty, p.135.
15. Ibid. p.121.
16. Mill, J.S. Remarks on Bentham's Philosophy, in J.M. Robson (ed.) Essays in Ethics, Religion and Society, 1969, p.14.
17. J.S. Mill's note to his father's, Analysis of the Phenomena of the Human Mind, Vol.II, p.309.
18. Utilitarianism, Ch.3, p.29.
19. Ibid. p.41.
20. Ibid. p.28
21. Duncan, Graeme Marx and Mill, pp.252-253.
22. Ibid. p.251.
23. Mill, J.S. Principles of Political Economy, Bk.4, Ch.7, Sect.1.
24. Mill, J.S. The Claims of Labour, in D & D, II, p.205.
25. PPE, Bk.4, Ch.4, Sect.2.
26. On Liberty, p. 132.
27. Utilitarianism, Ch.2, p.13.
28. Ibid. p.13.
29. Mill, J.S. Autobiography, p.92.
30. Ryan, Alan Two Concepts of Politics and Democracy: James and J.S. Mill, in Martin Fleisher (Ed.), Machiavelli and the Nature of Political Thought, pp.77-82, 99-113.

31. Utilitarianism, Ch.2, p.13.
32. Duncan, Graeme Marx and Mill, p.274.
33. Ibid. p.274.
34. Gray, J.N. J.S. Mill on the Theory of Property, p.263.
35. Ibid. p.263.
36. Mill, J.S. Letter to Gustave d'Eichthal, Oct. 8 1829, in Earlier Letters, Vol.XII, p.36.
37. Mill, J.S. Attack on Literature, in Examiner, June 12 1831, p.369.
38. Ibid. p.370.
39. Mill, J.S. Employment of Children in Manufactories, in Examiner, Jan. 29 1832, p.67.
40. Ibid. p.68.
41. Mill, J.S. Corporation and Church Property, in Jurist, Feb. 1833, p.17.
42. Mill, J.S. Remarks on Bentham's Philosophy in England and the English, by Edward Lytton-Bulwer, 1833, p.396.
43. Mill, J.S. Coleridge, in Westminster Review, Vol.XXXIII, March 1840, p.294.
44. Mill, J.S. Letter to Thomas Carlyle, April 11-12 1833, in Earlier Letters, Vol.XII, p.152.
45. PPE in Collected Works, p.938. See also On Liberty, pp.72-73.
46. On Liberty, p.132.
47. PPE, p.943.
48. Mill's discussion of education is to be found in Endowments and in On Liberty.
On Liberty, p.160.
49. Ibid. p.161.
50. Ibid. p.161.
51. Endowments in Collected Works, Vol.V, pp.622-626.
52. Fitzjames Stephen, J. Liberty, Equality, Fraternity, p.61.
53. PPE, p.970.
54. PPE, Bk.2, Ch.1, Para.1: Of Property, p.199.
55. PPE, Bk.2, p.200.
56. Mill, J.S. Chapters on Socialism in Collected Works, V, p.713.

57. PPE, Bk.2, p.207.
58. Ibid. p.207.
59. Chapters on Socialism, p.714 (my emphasis).
60. Ibid. p.714.
61. Smith, Adam Lectures on Justice, p.163.
62. PPE, Bk.2, p.208 (my emphasis).
63. Ibid. p.215.
54. EAP, pp.421-422.
65. A System of Moral Philosophy, p.337.
66. Ibid. pp.199-200.
67. TT 1:42.
68. PPE, Bk.2, p.215.
69. Ibid. p.208.
70. Mill, J.S. The Rights of Property in Land in Dissertations and Discussions, Vol.4, pp.288-290, and also in PPE, Bk.2, p.227.
71. Mill, J.S. Newman's Political Economy in Collected Works, V, p.450.
72. PPE, Bk.2, p.230.
73. Mill, J.S. Leslie on the Land Question, Fortnightly Review, June 1870. Also in Collected Works, IV, p.672.
74. The Right of Property in Land, in D & D, IV, p.290; also PPE, Bk.2. p.228.
75. PPE, Bk.2, p.232.
76. Ibid. p.231.
77. Ibid. p.232.
78. Ibid. p.232.
79. Ibid. p.229.
80. Coleridge in Essays on Ethics, Religion and Society, Collected Works, X, p.157.
81. Ibid. p.158.
82. Ibid. p.158.
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90. Mill, J.S. Thornton on Labour and its Claims in Collected Works, V, pp.653-654.
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94. Mill, J.S. Programme of the Land Tenure Reform Association with an Explanatory Statement by J.S. Mill (1871), in Collected Works, V, pp.689-695.
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114. PPE, Bk.3, p.775.
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118. The Claims of Labour in D & D, II, p.210.
119. PPE, Bk.4, Ch.7, Sect.6.
120. Ibid. Bk.4, Ch.7, Sect.6.
121. Ibid. Bk.4, Ch.7, Sect.6.
122. Ibid. Bk.4, Ch.7, Sect.6.
123. Ibid. Bk.4, Ch.7, Sect.6.
124. "I do not recognise as just or salutary, a state of society in which there is any class not labouring." PPE, Bk.4, Ch.7, Sect.1 (and also Sect.4).
See also Swartz, P. p.222.
125. PPE, Bk.4, Ch.7, Sect.6.
126. Civilisation, in Essays on Politics and Culture, (ed.) G. Himmelfarb,, p.71.
127. Ibid. p.71.
128. On Liberty, p.164.
129. Letter to Edward Herford, 22 January 1850, in Later Letters, Vol. XIV, p.44.
130. PPE, Bk.2, Ch.1, Sect.4.
131. Ibid. See also Ryan, Alan, J.S. Mill, pp.186-187.
132. Ibid.
133. Mill, J.S. Considerations on Representative Government, Ch.III, pp.203-204.

134. PPE, Bk.2, Ch.1, Sect.4.
135. Mill, J.S. From D & D (London, 1839, ed.) p.395. Quoted in: Gray, J.N. "J.S. Mill on The Theory of Property," p.268. It should be noted that personal security (which rights including the right to property protect) is, for Mill, "the most vital of all interests". "All other earthly benefits are needed by one person, not needed by another; and many of them can, if necessary, be cheerfully foregone, or replaced by something else; but security no human being can possibly do without." It is the "most indispensable of all necessities, after physical nutriment." Utilitarianism, Ch.5, pp.50-51.
136. Utilitarianism, Ch.5, p.50.
137. Ibid. p.50.
138. In On Liberty, Mill asserts that he "regards utility as the ultimate appeal on all ethical questions", but he carefully adds that "it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being." (p.74)
139. Mill, J.S. "Letter to Thomas Carlyle", 12 Jan. 1834. In this letter, Mill writes that although he holds "the good of the species (or rather of its several units) to be the ultimate end (the alpha and omega of my utilitarianism)" nevertheless, he believes, "with the fullest belief, that this end can in no way be founded but by each taking for his exclusive aim the development of what is best in himself." (Earlier Letters, Vol.XII, p.207).

Compare with Book 6 of A System of Logic where Mill identifies himself as a utilitarian by claiming that the one "standard by which to determine the goodness and badness, absolute and comparative, of ends is making human life happy". He adds, however, that the kind of happiness he has in mind is not of the "universally puerile and insignificant" sort but the kind "such as human beings with highly developed faculties can care to have". (On the Logic of the Moral Sciences, Book 6, A System of Logic. Bobbs-Merrill, 1965, pp.146, 148.)
140. Utilitarianism, p.55.
141. Ibid. p.59.
142. Ibid. Ch.2, p.17.
143. Ibid. p.58. See also Bentham, op. cit.
144. Ibid. Ch.2, p.24; also pp.21 and 23 and Ch.5, p.54.
145. Ibid. Ch.5, p.59.
146. Ibid. p.60; also p.55.
147. Mill, J.S. The Poor Laws in Examiner, March 9 1834, p.145.
148. Locke, J. Considerations on Interest and Money etc., p.13.

CHAPTER 4

NOZICK'S THEORY OF PROPERTY

Introduction

In Anarchy, State and Utopia, Nozick revives a version of minimal state liberalism that became especially popular in the nineteenth century. The position eschews compulsory welfare and sees it as a violation of the rights of propertyowners. Consistent with this view, Nozick argues that welfare state liberalism is unjustified. Welfare states have emerged by violating individual rights. The idea that it is morally illegitimate for the state to have more than a severely circumscribed protective role has thus received a powerful new impetus, and, more generally, Nozick challenges many of the hitherto unquestioned assumptions underlying much of contemporary liberal political and social philosophy.

My primary concern in this chapter is Nozick's theory of property rights and distributive justice. But these topics are best analysed and criticised in terms of his full theory of rights, for they employ or embody the kind of principles that his theory of individual moral rights requires. Thus, the chapter is, in fact, an examination of Nozick's theory of rights with an emphasis on his theory of property. In the course of the chapter, I aim to show, in particular, the extent to which Nozick's theory of property rights and distributive justice differs from the theories of those whom he claims are his philosophical ancestors such as Locke and Kant as well as from other liberals such as Price. I aim also to challenge Nozick's position, to show that it is fundamentally inconsistent, and must, therefore, be rejected.

1. Nozick's Theory of Individuals' Rights

1.1 The Nature of Individuals' Rights

Nozick opens Anarchy, State and Utopia dramatically: "Individuals have rights, and there are things no person or group may do to them (without violating their rights)"¹. These rights are natural in the sense that they are not acquired; in Hart's words, they are rights "not created

or conferred by men's voluntary actions"². Nozick claims that he has adopted Locke's natural rights. Quoting Locke, he initially suggests that among the individual moral rights which persons have are the primary, or first order, rights to life, health, liberty, and property, and the secondary, or second order, rights to self-defence, and the punishment of others who violate anyone's primary moral rights³. He also suggests that, in addition, individuals have the following "Lockean moral rights": rights against violence, theft and fraud, and the right to have contracts enforced.

Nozick's first words quoted above are important: there are things no one may do to you. He does not say that there are things no one may omit to do for you⁴. Prohibitions are by their nature negative in the sense that they are concerned with what is impermissible. But the "may not" of a prohibition can range over a positive or a negative, "may not do" or "may not not-do". In Nozick's theory of rights, it is the prohibition of a positive ("may not do") that is of primary, though not of exclusive, importance. He suggests that we can think of these rights as determining a "line (or hypothetical plane) that circumscribes an area in moral space around an individual"⁵. Other things being equal, others may not intrude upon, or invade this moral space without the individual's voluntary consent. The rights are, thus, negative or "non-interference" rights.

This idea of not invading an individual's moral space without his voluntary consent plays a key role in Nozick's theory. It will be examined further in Section 4. At this moment, we must note its importance in his discussion of welfare or aid. Nozick writes that his conception of rights holds "that your being forced to contribute to another's welfare violates your rights, whereas someone else's not providing you with things you need greatly, including things essential to the protection of your rights does not itself violate your rights"⁶. Thus, moral rights are rights to be free from a certain kind of interference from others. They are not rights to have others do or provide certain goods for one, however great the need for these goods may be. Thus, for example, the right to life is merely the right to be free from the interference of others in striving for the things one needs for life. Nozick denies that there are any rights to aid or welfare, that is, rights to have things or to be in a certain material condition. There are, he writes, only "particular rights over particular things

held by particular persons"⁷. And he argues that "a right to life is not a right to whatever one needs to live; other people may have rights over these things ... at most, a right to life would be a right to have or strive for whatever one needs to live, provided that having it does not violate anyone else's rights"⁸. Thus, if Doe lacks the means of life (food, shelter, medical care etc.), he does not have any right to these things - even if he is incapacitated and is not in a position to strive to meet his own needs. His dying because of failure to have the means of life does not violate his right to life. Roe's killing him would, of course, do so.

It is commonplace in the literature on rights to distinguish between those sorts of rights that are correlative to certain obligations on the part of others, and those that are not. Hart notes:

There is certainly one sense of "a right" ... such that it does not follow from X's having a right that X or anyone else has any duty. Jurists have isolated rights in this sense and have referred to them as 'liberties' just to distinguish them from rights in the centrally important sense of right which has duty as a correlative.⁹

These liberty rights or permissive rights merely affirm the possibility of a course of action relative to some system of rules or principles. Two persons may be at liberty (and in this sense have a right) to do the same thing which only one of them will be able to do. Hart gives an example: "Two persons walking along both see a ten dollar bill in the road and there is no clue as to the owner. Neither of the two is under a duty to allow the other to pick it up, and each has a right in the liberty sense to pick it up"¹⁰. Wollheim notes with regard to such cases that "to the jurist, when A has a right to do a certain action, in the sense of having a liberty or privilege to do it, not only has no one else any specific duty correlative to this right, but nothing anyone else might do would count as an infringement of the right"¹¹.

On Nozick's view, Lockean rights to choose or act are much more powerful than these permissive or liberty rights. They mark off an area within which an individual's choices and actions are morally protected and may not be interfered with by others. If A has such a right to a particular piece of land, then, (as Wollheim points out) he has "the right that another man should stay off his land, and the liberty or privilege to go on it himself"¹². Unlike permissive rights, these exclusive or exclusory rights impose correlative duties of forbearance on the part

of others; others have a moral duty not to act without the right-holder's consent in ways which would constitute interference with the freedom which the right protects. Feinberg notes that in the case of these strong exclusory rights which correlate with duties of forbearance on the part of others, having such a right gives one a kind of moral authority to prohibit or grant permission to others to act in certain ways¹³.

The value of having moral rights of the kind Nozick describes seems considerable. When recognised, such rights grant their possessors the ability to tie down the future and develop stable expectations about how others will act towards them. These rights provide the individual with a sphere of freedom within which he can develop stable expectations about what alternatives are available and what the consequences of doing certain things will be. In those areas protected by one's rights, one may make choices without fear that others will interfere to frustrate one's plans without one's consent.

A striking feature of Nozick's theory of moral rights is that the right may not be compromised (at least, not without the right-holder's voluntary consent). On Nozick's view, there are moral "side constraints" on what persons may do which imply that an individual's moral rights may not be violated or overridden in order to produce a greater good, or even to prevent a more serious violation of the rights of others. He even implies that no one's moral rights may ever be overridden for any reason, but at one point he hesitates over this conclusion saying that he wishes to avoid dealing with the issue of whether rights may be "violated in order to avoid catastrophic moral horror"¹⁴.

Nozick is clearly at pains to argue that there is no ultimate (or superior) teleological moral principle which makes it permissible to violate individuals' rights in order to produce some greater good. Individuals' moral rights do not hold a "derivative status" in relation to some other good like happiness or well-being which is to be maximised. He adds that even the maximisation of the non-violation of rights is not a goal which can justify overriding someone's moral rights. Such a theory which Nozick calls a "utilitarianism of rights" theory would allow an individual's moral rights to be violated if that would "minimise the total (weighted) amount of the violation of rights in the society"¹⁵. For Nozick, all teleological theories entail a false

view of individuals' moral rights. The correct view of such rights, he says, entails that there is a fundamental moral side-constraint which prevents others from doing anything that could violate these rights in the pursuit of their goals¹⁶. This side constraints view of rights, he says, "expresses the inviolability of other persons" for individuals may not be forced to bear some burden or sacrifice in order to produce a greater good, or avoid a greater harm¹⁷.

We have noted that one of the primary (or first order) rights in Nozick's theory is the right to property. The "side-constraints" principle operates in the case of this right too. The side constraints view of the right to property implies the moral impermissibility of infringing a person's property right even though this were done in order to save another individual's life. The right to property may not be compromised in the interests of the welfare of others; a person may not be compelled to part with any of the property or wealth he legitimately owns to provide others with the means of life. Taxation or any other means of confiscation for this end is morally impermissible; it is a violation of rights¹⁸.

For Nozick, then, as for many libertarians, justice is constituted by a set of rights of a purely negative character. Justice consists in doing no harm to others and implies no positive or special obligations to them (unless these have been agreed to). A person may choose for himself to feed the hungry, clothe the naked, shelter the homeless, care for the sick, protect the defenceless, assist the weak and enlighten the ignorant, but he cannot be compelled to use any of his personal resources - his property and wealth, time or effort - to such ends. Each individual must be his own judge as to whether or not he will use his resources in these ways. If a person does so, he does so from his own personally-chosen ethical posture towards others. But no other person, however great his needs, has a right to any of the resources of another individual.

1.2 Welfare Rights and the Role of Government: Locke and Nozick Compared

Nozick claims as we have noted, that he is "following the respectable tradition of Locke"¹⁹. He claims that he is incorporating the freedom and rights that Locke assumes in the State of Nature into his own

theory. But enough has now been said about Nozick's rights to cast doubts upon the correctness of this claim. In the chapter on Locke, we noted, contra Macpherson, that Locke takes a strong moral stand against great accumulations of wealth, that he calls those who aim to accumulate such riches "greedy" and "avaricious", and he argues that individuals can only become wealthy to such a degree at the expense of their fellow men for the resources of the world are not limitless. His approach, we noted, is to allow the government in civil society a role in the economy, and this includes some redistribution of wealth. His idea is that the system of property rights must not greatly disadvantage those without property, or they have a right to support in some kind of redistributive scheme. Exactly how much redistribution there should be is not made clear by Locke, but it is clear that there should be at least some sort of minimum welfare guarantee relative to contemporary standards and available resources. Like Reid, he makes it clear that individuals have a right to aid or welfare in accordance with their natural right to preservation, and such a right is, of course, incompatible with an absolute right to property. For Locke, it is the case that an individual has a right to what he needs, a right to be in a certain material condition, and that the property rights of other individuals can, to some extent, be overridden in order that these welfare rights be satisfied. He tells us that the "needy" individual has a "Right to the Surplusage (of the wealthy man's) goods", a "Title to so much out of another's Plenty as will keep him from extream want", and that this "cannot justly be deneyed him"²⁰. He notes, in addition, that "those should be most taken care of by the law who are least capable of taking care for themselves"²¹. For Locke, then, welfare is a public as well as a private responsibility; it falls within the domain of justice and not of charity alone. It is the job of government to raise the revenue necessary for aid or welfare.

Reid also, it will be recalled, suggests that care of those in need should not merely be a matter for private charity alone, and he, like Locke, grants the government a role in raising revenue for the provision of welfare. He says that "justice, as well as charity, requires that the necessities of those who are disabled from supplying themselves" should be supplied from the "common stock", and that "the rights of acquiring and disposing of property may be subject to limitations and restrictions, even in the state of nature, and much

more in the state of civil society, in which the public (governmental institutions) has 'eminent dominion' over the property of its subjects as far as the public good requires"²². Thus, in the theories of Locke and Reid, there is a right to welfare, a right to the necessities of life, and it is a right which is "superior to that which the rich man has to all his riches". The inferior right must yield to the superior right; the rights of ownership must yield to the claims of welfare. The prohibition in respect of welfare is negative: there are things no one (or no government) may omit to do for you ("may not not-do" for you) without violating your rights. This welfare right is incompatible with the absolute right to property and with the moral side constraints view of property rights.

The contrast with Nozick is clear enough. While Locke asserts welfare rights, Nozick denies them. Failure to provide an individual with things he needs greatly does not necessarily violate his rights for other individuals may have rights over just those goods he needs. As we have seen, Doe's dying because of failure to be given the means of life (by Roe) does not violate his right to life even if he is incapacitated and is not in a position to strive to meet his own needs. This is true both in the State of Nature and in Civil Society. In Nozick's view, Doe is not entitled to so much out of Roe's plenty as will keep him from want, he has no right to the "surplusage" of any other individual's goods. For Nozick, the injustice lies not in denying Doe his essential needs, but in depriving Roe of his justly held goods and wealth - and this would be the case even if Roe were very prosperous and could provide for Doe at small cost to himself. Further, for Nozick, it is not the case that a morally good government must take care of those who are least able to take care of themselves. On the contrary, the government which engages in redistributive measures for ends such as welfare provision is infringing the property rights of those who hold the resources necessary to finance them. To remove any part of individuals' resources through taxation or by other means without consent is, according to Nozick, morally illegitimate. Property rights may not be violated to provide welfare, nor may they be violated to prevent large accumulations of wealth.

It is clear that Nozick's rights are significantly different from Locke's, and it seems that a key difference lies in their conceptions

of the right to life, and their "ranking" of the rights to life and property. In Locke's theory, the fundamental Law of Nature to preserve mankind gives rise to the fundamental right to life or preservation. The right to property, in contrast, is not a fundamental right, but a derivative right that exists to satisfy the fundamental right. In Locke's theory, the right to life implies a right to that which is necessary to sustain one's life. He tells us that "Men being once born, have a right to their preservation, and consequently to Meat and Drink and other such things as Nature affords for their Subsistence"²³. That is, every man has the "right too to the means of preserving" his life, and Reid similarly states that "a right to life implies a right to the necessary means of life"²⁴. The same right, the fundamental right, which gives rise to the right to property (as means to an end) can also curtail the right to property when the end (life or preservation) will be thwarted by it. If there is a conflict between the right to life (of one individual) and the right to property (of another individual), the right to life, being the fundamental right, must always take precedence even where the property was justly acquired or inherited. Justice requires that "surplus" property be removed from the wealthy owner and given to the person in need. Such curtailment of property in favour of the needy implies a positive in rem right to property; it implies also a "lexical ordering" of the rights to life and property.

In Nozick's theory, the position is very different. There is no such "lexical ordering" of the rights to life and property. The right to life is not superior to the right to property. Both are on a par as "first order rights". Nozick explicitly denies that a right to life implies a right to be given whatever is necessary to the exercise of that right. If a person needs food, shelter, and clothing to exercise his right to life, he has no positive in rem right to be given these goods merely because he needs them. Other individuals may already have rights over these goods, and to deprive them of their goods is to violate their rights and to treat them unjustly. The right to property cannot, he claims, be derived from the right to life. On the contrary, "one first needs a theory of property rights before one can apply any supposed right to life (as amended above)", (that is, a right to strive for what one needs for life). "The right to life", he says, "cannot provide the foundation for a theory of property rights"²⁵.

For many people, including Locke, it seems intuitively clear that the right to life should always take precedence over the right to acquire and maintain large quantities of external goods. When the two rights clash, there is an intuitive presumption in favour of the former. But this is not so in Nozick's theory for his property rights are, as we have noted, very strong. In Section 5, we shall examine the validity of these strong property rights.

2. The Entitlement Theory or Theory of Justice in Holdings

In the last section, we noted the importance of the right to property in Nozick's theory. We also noted that it is a negative in rem right, imposing duties of forbearance on the part of others not to interfere with the rightholder's enjoyment of his property. This negative right is universal (and equal) in that all may own property, and all may have the right that others do not invade that property. But this is not to say that (physical) property is equally divided or held by all, or that there is a universal right to some (physical) property. This would imply a positive in rem right to property and it is just such a right that Nozick denies. We noted that he says that there are only "particular (property) rights", held by "particular people" over "particular things". Only the negative right is, therefore, universal and equal. The positive right to own property is not universal, but specific or special (pertaining to specific individuals). In this section, we shall look at Nozick's entitlement theory or the theory of justice in holdings in which he outlines how "particular persons" can come to own or hold legitimately "particular things".

According to Nozick's entitlement theory, a person has a right to whatever he has acquired in a manner consistent with any one of three general principles - principles which prescribe the conditions for justly appropriating unowned entities, transferring possessions, and rectifying past injustices²⁶. The idea is that any individual B justly owns property P if and only if he (1) makes an initial just acquisition of P (which was previously unheld), or (2) acquires P by legitimate transfer from some agent A who justly holds P (either through just acquisition or transfer), or (3) receives P as a rectification for past injustices. If B comes to hold P in any other fashion, his holding of P is unjust.

However, merely to know that B can justly come to hold P only if he satisfies these criteria does not tell us much about justice in holdings. For almost any theory of distributive justice can be stated in terms of Nozick's three formal principles of justice. (For example, our principle of transfer might require that only transfers that would satisfy, say, Rawls's difference principle²⁷ or Locke's welfare principle are legitimate). So to distinguish Nozick's theory from competing theories, we must set out in some detail his theory of justice in acquisition, transfer and rectification.

2.1 The Principle of Justice in Acquisition

The principle of justice in acquisition specifies "how unheld things may come to be held, the process or processes by which unheld things may come to be held by these processes, the extent of what comes to be held by a particular process and so on"²¹. Nozick's theory of justice in acquisition emerges in his discussion of Locke's theory of appropriation. Locke's answer to the question of how unheld goods may come to be held, it will be recalled, is that one may appropriate objects by mixing one's labour with them, provided there is "enough and as good left in common for others", and there is no waste. Central to Locke's theory of acquisition are the ideas of (i) entitlement through labour and (ii) a limitation or proviso on acquisition.

Nozick is not blind to the problems arising out of entitlement through labour, nor to the problems arising out of value-added schemes. Indeed, he candidly points out numerous difficulties for any such accounts²⁹. But it seems to be his view that the most potent objections to such accounts can be circumvented with the addition of a proviso. In respect of acquisition, he concludes that an individual has a moral private property right to (a) whatever previously unowned object he legitimately appropriates by (i) mixing his labour with it or (ii) discovering it or (iii) some function of these, and (b) whatever he makes with what he already owns (i) alone or (ii) in voluntary cooperation with others.

A "proviso", Nozick argues, is crucial to any "adequate theory of justice in acquisition"³⁰. The idea behind the Lockean proviso (at least as Nozick interprets it) is that individuals should not be made "worse off" by another's appropriation. "A process normally giving

rise to a permanent bequeathable property right in a previously unowned thing", he says, "will not do so if the position of others no longer at liberty to use the thing is thereby worsened". However, someone may be made worse off by another's appropriation in two ways: "first by losing the opportunity to improve his situation by a particular appropriation, or any one; and second by no longer being able to use freely (without appropriation) what he previously could"³¹. The first version requires that there always be unheld land or resources for new people to appropriate; the second requires only that there remain some goods which can be used, though not necessarily appropriated (because they may already have been appropriated by someone else). Nozick opts for the second, the "weaker" version of the proviso - the version which, of course, is compatible with the kind of laissez-faire capitalism that Nozick seeks to justify. Such a laissez-faire market economy, he suggests, will rarely, if ever, violate this version of the proviso³².

2.1.1 The Proviso and Needs

We have already noted that Nozick does not regard need as a principle of justice. Yet, when we attempt to apply his version of the proviso, we find some surprising results. Consider the following case. Suppose that there are two men, John Doe and Richard Roe. Doe is a crippled dwarf and Roe is robust and agile. There are two orchards full of equally good and productive nut trees; in the one, the trees are all short enough so that Doe can reach the nuts; in the other, the trees are so tall that Roe must climb them to get the nuts, and they are out of Doe's reach. Let us suppose further that both Doe and Roe intend to earn their livings by picking nuts and selling them, and that this is the only work available in the area. May Roe appropriate the orchard of short trees? May Doe? If Roe does so, he worsens Doe's situation in that Doe is no longer at liberty to pick the nuts from the short trees, and though he is, in some sense, at liberty to pick the others from the tall trees, he is in fact unable to do so. Thus, it would seem that Roe's appropriation violates the proviso. What if Doe appropriates the short trees? It seems that he too had worsened Roe's situation for Roe is no longer at liberty to pick the nuts from those

trees, and in order to pick the others from the tall trees, he will have to exert more effort and take more time.

One response might be that if Doe appropriates the short trees, he must compensate Roe in some way for the extra effort of climbing the tall trees. Similarly, if Roe appropriates the short trees, he too must compensate Doe - but the compensation would be greater in this case since Doe cannot get more nuts simply by climbing the tall trees.

While this is a possible response to the situation, it seems that it would not be Nozick's. It appears that Nozick would have to allow Doe to appropriate the small trees without compensating Roe for the extra effort he must undertake.

By having the only way he can earn a living forbidden to him, he is disadvantaged as compared to the normal situation, whereas someone is not disadvantaged as compared to the normal situation by having his most profitable alternative forbidden to him. A disadvantage as compared to the normal situation differs from being made worse off than one would otherwise be. (ASU, p.82)

Compensation is only due to the person who is disadvantaged - who suffers loss or injury to his interests. If a person is forbidden his only means of support, he is disadvantaged in this way. If he loses out on his most profitable means of support, he is not so disadvantaged. If Doe appropriates the orchard of small nut trees, he takes away from Roe his most profitable means of support for it will take Roe more hours and more energy to pick any given quantity of nuts from the tall trees than it would from the small trees. But, according to Nozick, Doe need not compensate Roe for this disadvantage. However, it is clear that if Roe appropriates the orchard of small nut trees, he has taken away from Doe his only means of support (we have assumed that no other work is available) and he must, therefore, compensate him. It would not be worth his while to appropriate the orchard of small trees. Of course, if Doe were an able-bodied individual like himself, Roe could appropriate the small trees and leave the less profitable alternative to Doe. It seems that simply because Doe is crippled, Roe must undertake this extra effort and hours of labour. But this would appear to be a clear case of allocation of resources on the basis of need, and of one individual having to make extra effort (or undertake extra labour) or even make a smaller profit, because of the incapacities of another. It is quite in keeping with the spirit of Locke's

principles of justice that Roe should make the extra effort that his "needy brother" is incapable of making. Need is, as we have seen, an important principle of justice for Locke. It is also quite in keeping with Reid's principles too for he specifically says that justice requires that the able-bodied should undertake extra labour to support those who through no fault of their own cannot work or who can work less than others. But the case is different for Nozick who holds that it is unjust that an individual should bear some burden or make a sacrifice on the grounds of the needs of others. It seems inconsistent with the spirit of Nozick's principles that Roe should make this extra effort or undertake extra labour.

Now suppose that there had been no short trees, only two orchards each with equally tall and productive trees. It would clearly be in order for Roe to appropriate one orchard. But now it appears that, on Nozickian principles, Roe does not have to make any provision for Doe's needs; he does not have to make any extra effort on account of Doe's incapacities, simply because his appropriation of one of the orchards of tall trees has not made Doe worse off. Doe may now be left with no way of earning a living - indeed, he may be left without any food for himself - but no extra effort or labour may be demanded from Roe because Doe's plight does not result from Roe's appropriation, from Roe's "forbidding" him his only means of support. While there is no inconsistency here, it does seem that if we may require an extra amount of labour from Roe under one set of conditions, on the grounds that Doe's capacities are limited, it would not be unreasonable to require a similar amount from him under other, not dissimilar conditions. Nozick's principles are especially hard upon those who cannot support themselves - orphans, the handicapped, the old etc. No other person owes them as much as a meal. Locke and Reid, I am sure, would insist that it is reasonable to require extra labour from Roe in both cases. While Roe would have a right to appropriate one of the orchards, he would at least have to help Doe obtain sufficient nuts to feed himself. If Doe, unable to get sufficient nuts, develops protein deficiency, and ultimately dies, Roe has violated the fundamental Law of Nature to preserve mankind. Doe's right to life has been violated. According to Locke's theory (and Reid's) additional labour would be required of Roe in both cases.

In civil society, it would surely not be unreasonable to require that the earnings of the able-bodied like Roe be taxed to provide for the needy in society like Doe. It is, of course, Nozick's stated position that extra labour cannot be required of some people on the grounds of other people's needs. He is committed to the view that taxation is unacceptable on the grounds that it is tantamount to "forced labour"; it violates property rights, and it uses some persons as "means" to the ends of others. Jeffrey Paul states that Nozick is the "successor to the great classical liberals of the seventeenth century" such as "Locke and Pufendorf"³³. But Nozick's position on the question of aid is very different from that of the natural law philosophers. Their ideas point in the direction of the welfare state, not the minimal state, and in their views, the right to life cannot be subordinated to the right to property. Thus, Locke argues that in civil society the law should take care of those who cannot take care of themselves. Pufendorf claims that care of those in need which in the state of nature is an imperfect right may legitimately be made into a perfect right in civil society, and Reid claims that care of those in need is a concern of justice as well as charity.

2.1.2 Property Rights and the Right to Life

In Nozick's view, the right to property cannot be derived from the right to life. Rather the order must be reversed:

A right to life is not a right to whatever one needs to live; other people may have rights over these things. At most, a right to life would be a right to have or strive for whatever one needs to live provided that having it does not violate anyone else's rights. With regard to material things, the question is whether having it does violate any right of others ... since special considerations (such as the Lockean proviso) may enter with regard to material property, one first needs a theory of property rights before one can apply any supposed right to life ... therefore, the right to life cannot provide the foundation for a theory of property rights. (ASU, p.179 footnote)

The importance for Nozick of the position described in the above passage is borne out by his treatment of certain cases. We shall discuss two of these:

Case 1

A person may not appropriate the only water hole in the desert and charge what he will. Nor may he charge what he will if he possesses one and, unfortunately, it happens that all the water holes in the desert dry up, except for his. This unfortunate circumstance, admittedly no fault

of his, brings into operation the Lockean proviso and limits his property rights. (ASU, p.180)

Case 2

The fact that someone owns the total supply of something necessary for others to stay alive does not entail that his (or anyone's appropriation) of anything left some people (immediately or later) in a situation worse than the baseline one. A medical researcher who synthesises a new substance that effectively treats a certain disease and who refuses to sell except on his own terms does not worsen the situation of others by depriving them of whatever he has appropriated. (ASU, p.181)

In order to make case 2 more like case 1, we can amend case 2 as follows:

Case 2'

All the water holes in the desert dry up but A builds a desalination plant by the sea and pipes the water to where he (and others) are living. On Nozick's principles, A may sell water from his plant on his own terms and he still does not worsen their position in the relevant sense - even if they die from thirst because they cannot pay his price.

As Nozick says, in his theory it is not the case that property rights must always be limited to spare others death. They may be so limited in case 1 but not in case 2 and 2'. We need to know if others are "worse off" and the relevant baseline situation for case 1 is before the appropriation took place and before the synthesis/invention took place for cases 2 and 2'. The relevant question for case 1 is, therefore, "Where would I be without A's appropriation?" and for cases 2 and 2', "Where would I be without A's synthesis/invention?" If the appropriation of the only water hole had not occurred, I would still have adequate water to drink, but if the synthesis/invention had not taken place, I would be dead. It is clear that the degree of labour, effort, knowledge or skill is not relevant to the entitlement even though cases 2 and 2' might suggest it. If only one water hole remained useful because its owner had taken the precaution of covering it to prevent its drying up, the owner would still have the right to charge what he wished - for if he had not taken this precaution, there would be no water anyway³⁴. If the medical researcher refuses to sell his medicine except on his exorbitant terms, then in so doing, his act does not make worse the situation of others. They all remain as they are if he refuses to make the drug available, just as they would if he had never discovered it at all. Similarly, if the person who covers the water hole refuses to sell water from it, except on very unreasonable terms, he does not worsen their situation for they will remain as they are, just as they would if he had not preserved the water hole.

Thus, in Nozick's theory, property rights are not always limited by the right to life of other persons. In some cases they are so limited. In other cases, to limit the owner's property rights to spare others' lives is to treat the owner as a resource for the benefit of others - it would violate the "root idea, namely that there are different individuals with separate lives".

Justice or Charity?

It could be argued that the inventor/medical researcher would be morally wrong to charge what he pleased (especially if this was a very high price beyond many people's reach) because he would have a duty of benevolence in such cases. If Nozick agreed, it might seem that an odd situation would result for his theory - it would be possible to have a right to do something which was morally wrong. But this is not necessarily so because it might be Nozick's view that the state should not be the enforcer of all morality, that it should enforce principles of justice, and not all principles of right. For Nozick the claim that person A has a right to X entails:

- (i) That person A does no wrong in doing, acquiring, or retaining X; and
- (ii) That all other moral agents capable of preventing person A from doing, acquiring or retaining X have an obligation not to try so to prevent A.

But person A may decide to waive his right. Even though he may justly do X, and even though no other person(s) may prevent his doing X, he may voluntarily decide not to do X. He may choose to be benevolent instead.

Apart from the issue of enforcement, there seem to be important moral differences between acts of charity or benevolence and acts of justice. One of these differences is explained very clearly by Reid in his Essays on the Active Powers of the Human Mind. When a person acts justly towards another, he does "no more than he was bound to do"³⁵. But when a person acts benevolently or charitably, he is "promoting the good and happiness of others"³⁶. He is conferring "a benefit or favour" and, thus, is doing more than he was bound to do. The appropriate "response" to a favour or benefit is that of "gratitude". "We must (therefore) distinguish good offices to which we have a right from those to which we have no right and which thus require a return

of gratitude"³⁷. On this reasoning, if the medical researcher dropped his very high price to a reasonable one, having been moved by everyone's pleas, this would be an act of kindness or charity on his part, and the buyers would be in his debt. He is doing more than he is bound to do; he is conferring a benefit. The buyers would seem to owe him a debt of gratitude or be under a moral obligation to return the kindness.

It is interesting to speculate upon how Locke might have viewed the medical researcher case. Suppose someone had found a cure for plague in 1665 and argued, on Nozickian principles, that he had, in justice, a right to charge the plague-stricken Londoners for it what he wished. How might Locke have answered him?

We know that Locke was contemptuous of self-interested profit and gain, and that he argued that it is immoral, unjust, to profit out of the necessity of others³⁸. The fundamental Law of Nature is the preservation of mankind, and one always has a duty to act according to this law, provided one's own preservation is not at stake. To put one's own profit before the preservation of others is, thus, to commit an immorality of the grossest kind, and such an act, because it violates Natural Law, is compatible with a "state of licence" rather than a "state of liberty".

Suppose now that the inventor of the cure argued that he might have an imperfect duty (one of benevolence or charity) to sell it at a reasonable price, but not a perfect duty (one of justice) to do so - for he could justly charge whatever he wished. How might Locke have answered this challenge?

We have already noted that in natural law philosophy (and this includes the theories of Pufendorf and Reid as well as Locke), need is viewed as a principle of justice and not of charity. Natural law philosophers do not draw the line between justice and charity in the same place as modern libertarians such as Nozick. Many acts that would be seen by Nozick as benevolent are, for natural law philosophers, acts of justice. That Locke would have considered the duty in the above case to be one of justice and not of purely voluntary charity seems clear from a discussion of the 'just price' in Venditio³⁹. He considers the case of

a vendor holding wheat in a town pressed with famine.

Yet if he (the vendor) carries it away unless they will give him more than they are able or extorts so much from their present necessity as not to leave them the means of subsistence afterwards, he offends against the common rule of charity as a man, and if they perish any of them by reason of extortion, is no doubt guilty of murder. For though all the selling merchants gain arises only from the advantage he makes of the Buyer's want, whether it be a want of necessity or fancy t'is all one, yet he must not make use of his necessity to his destruction, and enrich himself so as to make another perish. He is so far from being permitted to gain to that degree, that he is bound to be at some loss, and impart of his own to save another from perishing.

(My italics)

It is true that Locke writes of 'charity' not of 'justice', but we already know that in many cases, 'charity' implies a Right or Title⁴⁰. This particular passage occurs in his discussion of the 'just price' so it would appear to be a matter of justice (rather than voluntary charity in the modern sense) that Locke has in mind when he writes that the vendor is "bound to be at some loss and impart of his own" to preserve others. In other words, if the vendor is "at some loss" through the sale, this is required by justice and not by mere kindness. If the vendor is not willing to be at some loss, to make some financial sacrifice, and any one should perish because of his stand, he has not acted in an unkind way; he has committed murder. This passage in Venditio is quite consistent with TT 1:41-42 in which Locke argues that the poor man has a right or title to as much out of another's plenty as will keep him from want and the wealthy may not enrich himself by exploiting the poor man's necessity.

There seems to be nothing in Locke's principles to suggest that his view would be different if the vendor alone had wheat because he had invented a pesticide which preserved his crop while the crops of everyone else died. Indeed, he makes it clear that claims to the benefits of one's labours - one's honest industry - are limited by the fundamental law of nature to preserve mankind⁴¹.

It is interesting to note that the idea that inventions associated with preservation should be sold on reasonable terms as a matter of justice is expressed very clearly by another natural law philosopher, Francis Hutcheson.

A like right we may justly assert to mankind as a system, and to every society of men, even before civil government,

to compel any person who has fallen upon any fortunate invention, of great necessity or use for the preservation of life, or for a great increase of human happiness, to divulge it upon reasonable terms. The inventor ... is justly entitled to a compensation in proportion to the good it brings society, or to the labour which the invention may have cost him or to the profit he could have made by it. But if a man is exorbitant in his demands, or so inhuman as not to employ his discoveries where they are wanted, or will always retain the secret to himself, so it must perish with him, if the matter appears to be of great importance to mankind, a society has the right to compel him to arbitration about the proper compensation to be made for the discovery; and to force him, upon just terms, to make it. (SMP, Ch.16, p.109)

Now Hutcheson applies his argument to inventions which increase human happiness or well-being as well as those concerned with the preservation of human life. What would Locke's position have been in the case of an invention which tends to enhance the well-being of all or the prosperity of the society, but is not concerned with preservation - in other words, that its sale at an exorbitant price would not lead to any person's death? Would Locke agree with Nozick that in such a case the inventor could sell the invention on his own terms, or with Hutcheson? Clearly if preservation is not at issue, there is no violation of this natural right, that is, the inventor in selling on his own terms is not acting unjustly by violating the natural right of others to their preservation. But it is far from clear that Locke would agree that simply because preservation is not at stake that the inventor had Nozickian type property and liberty rights in his invention. Locke writes that the magistrate

shall be accountable for his laws and administration as a magistrate, according as they are intended to the good, preservation, and quiet of all his subjects in this world as much as possible. (Tol, 1:179)

In civil society, the individual submits both his person and property to the regulation and jurisdiction of the government;

He is to part with as much of his natural liberty in providing for himself, as the good, prosperity and safety of the society shall require. (TT 2:130)

In both the Treatises and Essay on Toleration, the welfare of the public is given as the standard for defining what the magistrate may or may not do with property rights. By the welfare of the public, Locke clearly does not mean simply the preservation of all - although this must be the first consideration of any government. He means, in addition, the "good of all subjects" and the "good and prosperity and safety of the

society". I think it is most unlikely that Locke would believe that an inventor has the right to sell his invention on very exorbitant terms (i.e. that he has such strong and extensive property rights) if this invention serves to enhance the good or prosperity of the society, or any part of it. It seems Locke would probably agree with Hutcheson, not Nozick, for surely the civil society in compelling the inventor to arbitration about the proper compensation to be made for the discovery, and in forcing him upon just terms to make it, is simply exercising that "regulation", "jurisdiction" and "dominion" over persons and their property for the "good of all subjects", the "good and prosperity of society". It should be noted also that Locke makes it clear that in civil society each must labour for the public good. "I think everyone, according to whatever way Providence has placed him in, is bound to labour for the publick good, or else he has no right to eat"⁴². Clearly, to fail to divulge one's invention on reasonable terms, to be exorbitant in one's demands, is to consider only one's own good.

2.2 The Principle of Justice in Transfer

The principle of justice in transfer is the second principle in Nozick's entitlement theory. It specifies those means by which individuals' entitlements to holdings may legitimately be changed or transferred to other persons. The key idea is that any person, D, who justly holds property P may give P to any other person whom he wishes to receive it. Property may not be taken against the owner's will (unless there has been a violation of the weaker form of the proviso). Thus, for example, D's property holding is not subject to the needs of other individuals no matter how great this need might be. Nor can any combination of individually just transfers be unjust.

In addition to disallowing taxation for welfare, the entitlement theory excludes certain other types of transfer:

Some people steal from others or defraud them, or enslave them, seizing their product, and preventing them from living as they choose, or forcibly exclude others from competing in exchanges. None of these are permissible modes of transition.

Like taxation for the purposes of aid, these are impermissible modes of transition because they are unfree. The principle of justice in transfer is basically a principle upholding voluntary exchange, free

from governmental regulation (except as is necessary to prevent fraud or coercion).

Nozick summarises his position as follows:

- (1) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
- (2) A person who acquires a holding in accordance with the principle of transfer from someone else who is entitled to that holding is entitled to that holding.
- (3) No one is entitled to the holding except by (repeated) application of (1) and (2). (ASU, p.151)

It would seem that clause (2) needs amending. Suppose one night, I stealthily pick some of my neighbour's strawberries. (I, of course, am not entitled to the fruit as theft is an impermissible mode of transfer). I go to another village next day and trade these strawberries for some bread and that trade is without coercion or other impermissible practices. According to (2), I am entitled to the bread because I have acquired it "from someone else who is entitled to that (bread)". (We are supposing that everyone else's holdings are justly acquired except for my strawberries.) But the new holder of the strawberries is not entitled to them because I was not entitled to them before our trade, so clause (2) is not fulfilled. This is an odd result. If anyone lacks entitlement, it is surely me. Clause (2) needs to be amended, possibly as follows:

- (2') A person who acquires a holding in accordance with the principle of justice in transfer, where all parties to the transfer are entitled to their holdings, is entitled to the holding.

We noted above that the weaker version of the Lockean proviso applies to all transfers too. As Nozick puts it; "Each owner's title to his holding includes the historical shadow of the Lockean proviso on appropriation". It is clear, then, that all that was said before in respect of acquisition applies also in respect of transfer. The medical researcher, A, could bequeath his laboratory, its contents, and his secret method for synthesising the drug to his son, A2. A2 could then sell the drug for any price he wishes. Similarly, if A2, B2 and C2 inherit a water-hole each from A, B and C respectively, and the water-holes of B2 and C2 dry up, A2 may not charge B2 and C2 "what he wills", even though A's bequest of the water-hole to A2 was a just one. But A2 may legitimately charge B2 and C2 what he wills if his own water-hole did not dry "due to special precautions he" (or even

his father, A,) "took to prevent this". Note how, on Nozick's theory, a person's material position may be affected for better or for worse by the prudence or imprudence, talent or lack of it, of one's forebears.

2.3 The Principle of Rectification

The purpose of the principle of rectification is to specify what procedures and principles should be used to correct the effects of past injustices, that is, cases where the principles of justice in acquisition or transfer were not observed. In an entitlement theory, such a principle is more difficult to arrive at than in other theories of distributive justice because the first two principles rely so heavily on the actual course of events leading up to a distribution.

For Nozick, a sufficient condition for restoration seems to be this. One must determine the holdings that persons would have had if the violation had not occurred⁴³. Justice is restored if those whose rights were violated (as well as those who were made worse off by having others' rights violated) are brought up to at least as high an indifference curve as they would have been had the injustice not occurred. Thus, suppose that there are only two adults Richard and John, each with one descendent Richard-son and John-son. John owns a fruit tree which Richard takes and transplants without getting John's approval. For justice to be restored, John should get the tree back with whatever crop he would have had (or something else equally valuable to him). But suppose Richard does not restore justice by the time he and John die. Richard-son now has the transplanted tree, and John-son has nothing. Can justice be restored? Nozick wants us to determine what would have been the case had the injustice not taken place, or had justice been restored. Perhaps John would have bequeathed the tree to John-son, or John may have neglected the tree which would then have died. Perhaps, instead John might have thought John-son a fool, Richard-son quite clever and good with trees; hence he might have transplanted the tree for Richard-son anyway. Justice is restored if everyone is as well off as they would have been had the injustice not occurred.

The general outline of such an approach is not implausible. In particular, it seems appropriate to seek out the relevant preferences in the "subjunctive mood"⁴⁴ (for example, what John would have wanted

for John-son if either the injustice had not been committed or if it had been rectified). But while it seems plausible in simplified situations such as that sketched above, in real life one is faced with the gigantic task of explaining how to restore justice after generations of injustice. It is most improbable that we can calculate such subjunctive determinations for so many inter-dependent individuals through many generations, especially as the cast of characters might have been different had no injustices occurred. Nozick recognises this problem and he suggests that some principle akin to Rawls' difference principle might be necessary⁴⁵, given inadequate information to satisfy the strict principle of rectification, and the obvious call to restore justice as best as we are able.

3. Nozick's Taxonomy of Principles of Justice

Historical Principles

The entitlement theory or theory of justice in holdings, Nozick says, is an historical theory of justice. An historical theory grounds present entitlements on actual past occurrences. From the perspective of such a theory, the justice of a state of affairs can only be assessed in the light of the historical processes from which it emerged. The mere possibility that a state of affairs would have come about does not suffice to make it just. Thus, "the fact that a thief's victim voluntarily would have presented him with gifts does not entitle him to his ill-gotten gains"⁴⁶.

Nozick notes that the entitlement theory is not alone in giving weight to historical facts. Among other theories which do so is one which prescribes that holdings are to be proportional to moral merit⁴⁷. A person is deserving (or possesses moral merit) in virtue of his past activities. Thus, in assessing present entitlements from the viewpoint of this principle, historical facts must be taken into account.

End State Principles

There are, however, principles that define qualifying conditions for entitlements that disregard historical facts. These principles Nozick calls "end state principles". They "hold that the justice of a distribution is determined by how things are distributed ... as judged by

some structural principle(s) of just distribution"⁴⁸. A structural principle is one which prescribes a distribution without making reference to any particular facts about individuals. Such a principle would define the positions available in a distributional matrix but would be indifferent as to which individuals filled the positions. "Two distributions are structurally identical", Nozick argues, "if they have the same profile, but perhaps have different persons occupying the slots"⁴⁹. Thus, in a society of three persons, A, B, and C, the distributional matrix A-3, B-2, C-1, would be structurally identical to A-1, B-2 and C-3 and A-2, B-1, C-3. Utilitarianism and welfare economic principles are two examples of end state principles of justice⁵⁰.

Patterned Principles

Patterned principles of justice prescribe that persons are entitled to a share of the total stock of goods proportional in size to the degree to which they manifest some specified attribute or attributes. "Let us call a principle of distribution patterned", Nozick writes, "if it specifies that a distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or lexical ordering of natural dimensions"⁵¹. The egalitarian principle is a patterned principle in that it prescribes that persons are to receive in proportion to their humanity, and, consequently, that all are to receive the same. Patterned principles, Nozick writes, might be seen as suggesting various substitutes for X in the schema: "To each according to his X"⁵². Among the distributional principles which Nozick classes as patterned are those which prescribe a distribution proportional to moral merit, need and IQ. "Almost every suggested principle of distributive justice", Nozick asserts, "is patterned: to each according to his moral merit, or needs, or marginal product, or how hard he tries, or the weighted sum of the foregoing, and so on"⁵³.

"The principle of entitlement", Nozick claims, "is not patterned". He goes on to argue that "the set of holdings that results when some people receive their marginal product, others win at gambling, others receive returns on investments, others make for themselves much of what they have, others find things, and so on, will not be patterned"⁵⁴.

Clearly, the "principle of entitlement" as Nozick calls it is not a

principle of the same order as, say, the principle of need or moral merit. "Entitlement" is not the ground of a right; entitlement is right. To say that a person is entitled is to say that he has a right; it is not to suggest the reason why he has the right. The entitlement theory, as Nozick expounds it, prescribes that persons are entitled to those things that they have acquired justly, that is, acquired in a manner consistent with the principles of justice in acquisition and transfer. The issue between Nozick and his critics, therefore, is whether entitlement should be grounded upon the "free market" principles of acquisition and transfer, or upon some other principles such as need or effort, or whether the free market principles of acquisition and transfer should be modified (rather than replaced) by such alternative principles. Welfare liberals usually argue for the latter position. They accord some weight to the free market principles of acquisition and transfer, but argue against the libertarians such as Nozick that such principles do not exhaust the concept of justice. They argue for a "lexical ordering" of principles according to which the principle of need takes precedence over the principles of acquisition and transfer. The free market or "process" principles of acquisition and transfer apply only to the "economic surplus", that part of the total wealth that remains after each person's basic needs have been met. This is the position that is taken by Locke and Reid, but it is possible for them to take this position because they do not deny the legitimacy of positive in rem property rights. In contrast, libertarians such as Nozick argue that the laissez-faire principles of acquisition and transfer (exchange) together exhaust the concept of distributive justice. It is in this respect that their theories of justice are distinctive. Commenting on Nozick's theory, Scanlon writes:

Many theories of justice will give some role to considerations of entitlement; that is, they will recognise some processes (i.e. process principles such as acquisition and transfer) as conferring legitimacy on their outcomes. What is special about Nozick's view is that it makes entitlement the beginning and end of distributive justice.⁵⁵

In the remainder of this section, I shall briefly outline Nozick's case for making these entitlement principles "the beginning and end of distributive justice" for this will make clear why he considers the distinction between historical and unpatterned principles of justice on the one hand, and patterned and end state principles on the other hand, to be of such fundamental importance, perhaps as Scanlon suggests, "the

central theoretical device of the book". The detailed analysis and criticism will follow in Section 5.

Patterns and Liberties

The maintenance of an established distribution in conformity with end state or patterned principles, Nozick argues, requires that persons be restricted in what they can do with the things to which they have rights. "Liberty", he asserts, "upsets patterns"⁵⁶. Begin with any particular patterned or end state distribution, and if people are permitted to do whatever they want with their respective shares, there is no a priori reason to expect that, when each employs his share in order to realise his own ends, anything like the desired pattern will be maintained. Suppose that D1 were the distribution of goods obtaining in a given society and that this distribution were in accord with a favoured pattern (for example, strict equality). The distribution, D1, could be changed into another distribution, D2, not in accord with this pattern, by any one of a variety of means: by gifts, by someone starting a very successful business in his spare time using only resources to which he was entitled under D1, or, as Nozick suggests, by one million people willingly paying Wilt Chamberlain 25 c per head for the privilege of watching him play basketball⁵⁷.

Attempts to maintain such patterns by a more-than-minimal-state will always restrict individual liberty, Nozick argues. Any favoured pattern will be transformed into an unfavoured one by people choosing to act in various ways - exchanging goods and services with other people or giving things to other people. To maintain a pattern, the state must constantly interfere to stop people from transferring their resources as they wish, or to take from some persons resources that others have chosen to transfer to them. In order to maintain a particular pattern such as D1, limits must be set on transfers, exchanges and private production. Unless the authorities take decisive action to prevent it, unless, as Nozick puts it, "capitalist acts between consenting adults" are prohibited, the emergence of a parallel market could lead to a situation in which a person's de facto income is significantly at variance with his officially assigned (de jure) income. To maintain a patterned or end state distribution, Nozick argues, "one must continually interfere to stop people from transferring resources they wish to, or continually interfere to take from some

persons resources that others for some reason chose to transfer to them"⁵⁸.

In contrast, where historical entitlement principles obtain, the "pattern" of title holdings emerges from a series of free choices; choices to appropriate and transfer. Persons are completely free to modify the existing distribution (or, rather, their small part of it) by engaging in any appropriation or exchange that is consistent with the fundamental principles of "procedural justice". There are for procedural theorists like Nozick and Hume, no a priori limits on the direction in which, or the extent to which, persons can alter an existing distribution. "Patterning" and "end state" systems, on the other hand, can permit no such unlimited freedom to modify an existing distribution. Persons can have no right to engage in transactions that change the favoured distributional ideal. "Patterned distributional principles", Nozick writes, "do not give people what entitlement principles do, only better distributed. For they do not give the right to choose what to do with what one has"⁵⁹. In short, they deny people liberty; they deny people their rights.

Proponents of patterned distribution, Nozick argues, focus on recipient justice (on positive in rem rights), ignoring any right a person might have to give something to someone. Discussions are on whether persons should have the right to inherit, rather than on whether they have a right to bequeath, or whether persons who have a right to hold also have a right to choose that others hold in their place. Historical entitlement views redistribution of income and holdings as a violation of people's rights, unless it involves rectification of past injustice. It sees taxation of earnings from labour as forced labour⁶⁰ if the proceeds of the taxation are not used for services that benefit those who are taxed. Whether through taxation on wages or on profits, patterned principles of distribution, Nozick argues, involve appropriating the activities of other persons. Seizing the results of someone's labour is equivalent to seizing hours from him and directing him to carry on various activities. The person has in this respect lost the liberty to decide what purpose his work is to serve⁶¹.

4. The Principle of Self-Ownership in Traditional Liberal Theory

We have seen that much of Nozick's theory of distributive justice rests upon claims about the rights of individuals. Nozick does not attempt to set out a full moral theory, placing that task beyond the scope of his work, but rather suggests a line of argument leading to a view of morality as consisting of "side-constraints" on action. He distinguishes this type of view from "goal-orientated" moralities such as utilitarianism whose aim is to maximise some specified good. A "side-constraint" view of morality regards certain actions as categorically impermissible. Significantly included among such impermissible actions is using any part of the property of some persons to aid others without their consent.

At the heart of Nozick's theory of justice and the set of rights and liberties it embodies, is a conception of individuals as separate and distinct beings. This distinctness or separateness of persons Nozick calls "the root idea"⁶². The moral significance of the root idea is that these separate individuals are "inviolable", and the "moral side-constraints (upon action) express the inviolability of individuals"⁶³. Side constraints upon action, Nozick explains, "reflect the underlying principle that individuals are ends and not merely means; they may not be sacrificed or used for the achieving of other ends without their consent. Individuals are inviolable"⁶⁴. He repeatedly emphasises the unacceptability of a person's being used, sacrificed or treated as a means or resource by another. "No one should be used for any end, except as he chooses"⁶⁵.

The moral side constraints upon what we do, I claim, reflect the fact of our separate existences ... There is no justified sacrifice of some of us for others. This root idea, namely that there are different individuals with separate lives, and so no one may be sacrificed for others, underlies the existence of moral side constraints ... The stronger the force of an end-state maximising view, the more powerful must be the root idea capable of resisting it that underlies the existence of moral side constraints. Hence the more seriously must be taken the existence of distinct individuals who are not a resource for others.⁶⁶

Using one person as a resource or "means" for others involves using some of his resources for the sake of others. Items which count as being his resources are all those things to which he has a property right. They include items ordinarily viewed as property (house, car, shares,

bonds) but also skills, talents, brains, arms and legs, so that property is being employed in its widened, true Lockean sense⁶⁷. Given its expanded meaning, however, it is accurate to say that it is on the ground that state-enforced welfare policies violate individuals' property rights that Nozick contends that taxation for the purpose of enhancing the social good illegitimately uses persons as resources for others. He makes this point explicitly later when he objects to taxation for welfare and other redistributive goals in particular, and to "patterning" or end state principles in general because they wrongly depart from the notions of "self-ownership" and "inviolability" that he attributes to classical liberalism.

Whether it is done through taxation on wages or on wages over a certain amount, or through seizure of profits, or through there being a big social pot so that it's not clear what's coming from where and what's going where, patterned principles of distributive justice involve appropriating the actions of other persons. Seizing the results of someone's labour is equivalent to seizing hours from him, and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do, and what purposes your work is to serve, apart from your decisions. This process whereby they take this decision from you makes them a part-owner of you; it gives them a property right in you. Just as having such particular control and power of decision, by right, over an animal or inanimate object would be to have a property right in it.

End-state and most patterning principles of distributive justice institute (partial) ownership by others of people and their actions and labour. These principles involve a shift from the classical liberals' notion of self-ownership to a notion of (partial) property rights in other people.⁶⁸

Taxation for redistribution, then, appropriates the labour (or some other resource) of some for the good of others. Such a measure, according to Nozick, can only be justified if it can be demonstrated that tax-payers are not "self-owners", but are owned at least in part by the beneficiaries of welfare and other redistributive policies.

Redistributive principles, Nozick argues, "involve a shift from the classical liberals' notion of self-ownership". According to Nozick's interpretation of the classical liberals' conception of self-ownership, an individual's actions, labour and property may, in justice, be fully controlled by himself alone. Nozick does not say at this point who these "classical liberals" are. We may hazard a guess that he has in mind Locke and Kant. In the next section, I shall compare Nozick's and

Kant's principles and ideas on property and show that Nozick's principle of self-ownership or inviolability is very un-Kantian. In the remainder of this section, I shall briefly look at Locke's recommendations for the instruction and welfare of poor children for these show most clearly his rejection of Nozickian-style self-ownership in respect of liberty and external property. I shall summarise his ideas, and then show how these policies would, according to Nozick, make the poor children "part-owners" in those who are compelled to help them. I shall also make reference to his views on the role of government, showing, in particular, that he is no minimal statist. I shall finally point to some fundamentally different assumptions that Locke and Nozick make which account for their respective positions on the question of self-ownership.

4.1 Lockean Self-ownership: Locke and Nozick Compared

Locke recommends that "working schools, generally for spinning or knitting or some other part of the woollen manufacture, be set up in each parish" and "that the teaching in these schools be paid out of the poor rates"⁶⁹. He suggests that the schools should take all children between the ages of three and fourteen whose families are in receipt of poor relief. The purpose of taking children at three years old is two-fold: first, "the mother will be eased of a great part of her trouble in looking after and providing for them at home, and so be at more liberty to work", and secondly, "the children will be better provided for". In amplification of this second reasons, he says, "What is necessary for their relief will more effectively have that use if it be distributed at school, than if it be given to their fathers in money; For a great number of children giving a poor man a title to an allowance from the parish, this allowance is given once a week, or once a month to the father in money, which he, not unseldom, spends on himself at the alehouse, whilst his children (for whose sake he had it) are left to suffer, or perish under the want of necessaries unless the charity of neighbours relieve them". At home, many of them are only "scantily" fed; "at school, they will be in no danger of famishing, but, on the contrary, will be healthier and stronger than those who are bred otherwise". These schools are thus for the welfare of the younger children and for the welfare and instruction of older children.

In cases where "the poor children of any parish" are too numerous to be put in one school, some of the boys should be apprenticed until

the age of twenty-three to handicraftmen or landowners. Locke suggests "that the handicraftmen of the parish be bound to take every other of their respective apprentices from amongst the boys in the school, without any money", and that those who have "land of their own to the value of £25, or upwards, must choose out of the school what boy each of them pleases, to be his apprentice in husbandry" also without any money. Finally, he recommends that all the boys who by fourteen have not become apprenticed already should be apprenticed "to such gentlemen, yeomen or farmers" as have the greatest land, "who shall be obliged to take them for their apprentices till the age of 23". In cases where it is not possible for these people to take on apprentices, they may have them apprenticed to a handicraftman, but "at their own cost".

These recommendations are quite consistent with Locke's general position. The "preservation of mankind", and "the feeding of the hungry"⁷⁰ are precepts of Natural Law and these precepts are "absolute"; they "cease not in Society", but "stand as an Eternal Rule to all Men, Legislators as well as others"⁷¹. "Municipal Laws of Countries are only so far right, as they are founded on the Law of Nature, by which they are to be regulated and interpreted"⁷². Care of those in need cannot, for Locke, be a matter of voluntary consent; it cannot "depend on an unstable and changeable will". "What immorality would not be allowable, and even inevitable, if the example of the majority gave us the law?"⁷³ he asks. It is clear why Locke argues that "those should be most taken care of by the law who are least capable of taking care for themselves"⁷⁴. Some of the "surplus" property of the wealthy may legitimately be used for financing the welfare and instruction of children in need⁷⁵.

For Nozick, the position is very different. There is no reason why a wealthy individual, just because he is wealthy, should pay the poor rate for the welfare and instruction of other people's children, or should have to bear the cost of having another person's child apprenticed to a handicraftman (in cases where he cannot accept him as his own apprentice). According to Nozick's theory, the poor rate could legitimately be levied only upon those individuals whose appropriation of land (or other natural resources) had worsened the situation of the children and their families - for example, if a wealthy landowner had enclosed a large area of land and thrown the families off it, leaving

them no land to use. But in the many cases where the poverty of some families does not result from a violation of the proviso, no poor rate could legitimately be levied. To levy such a rate upon wealthy individuals, just because they are wealthy, would amount to treating them as a resource for the poor children. They would not be self-owners, but would be owned (in part) by the poor children.

It also seems to be the case that Locke's apprenticeship scheme would result in a loss of liberty for some persons that Nozick could only view as objectionable and a further violation of the principle of self-ownership. We noted that Locke recommends "that the handicraftmen be bound to take every other of their respective apprentices from among the boys" in the working school in cases where "the poor children" are too numerous for them to be put in one school. Now a handicraftman who believed in the rightness of the Nozickian principle of self-ownership might well argue that such a policy constrains his choice of apprentices. Why should he not be free to take on only apprentices that he wants - none of whom may be from the poor school? Simply because the school has an "overflow" problem, he is legally required to "discriminate positively" in favour of the working school children to satisfy the 50% quota rule. There is a similar loss of liberty for the farmer, yeoman or landowner. They may all argue that they do not wish to take on a "husbandry apprentice" anyway. But Locke's recommendations bind them to take one each. Their only consolation is that they shall not "be bound to have two such apprentices at a time".

It seems that Locke's apprenticeship scheme would violate the Nozickian principle of self-ownership. The scheme allows that the liberty of an individual - an individual who may be in no way responsible for the poverty of others because he has not violated the proviso - may be compromised simply because others are in need. It violates the right of such individuals to employ or train those of their own choice. It "uses them to achieve other ends" (such as the good of others, the common good) without their consent.

In contrast, this loss of liberty is quite consistent with Locke's principles of justice. In civil society, both one's "Person and Possession" are regulated by the Laws of the Society"⁷⁶. That is, each one has "a Liberty to dispose and order, as he lists, his Person,

Actions, Possessions, and his Whole Property" but "within the allowance of those Laws under which he is"⁷⁷. Just laws regulate property and liberty according to the "publick Good" and this "publick good" includes the preservation and welfare of "every member" of society. It is permissible and even necessary for such laws to curtail the liberty and property of some to ensure that the needs of others are met. One has a right to dispose of one's actions (and property) as one pleases, but subject to the needs of others in society. "Self-ownership" for Locke, therefore has important limitations. It seems that it is Nozick's own principles that involve a shift from the classical liberals' notion of self-ownership (if Nozick is thinking of Locke). For Locke, the person and his property are not inviolable in the same sense as they are for Nozick. "The end of Government", Locke writes, "is the good of the Community". Any alterations to the law that a government makes "tending to that end, cannot be an incroachment upon any body: since nobody in Government can have a Right tending to any other end. And those only are incroachments which hinder the public good"⁷⁸.

* * * *

Locke makes it plain that the preservation of the needy does not exhaust the concept of the "publick good". There are other positive ends of government, too, the achievement of which requires the regulation of property and liberty rights and hence the compromising of self-ownership. Locke argues that civil society may regulate property and liberty rights to ensure "the good, preservation and quiet of all subjects"⁷⁹, the "good of the community"⁸⁰, "the good, prosperity and safety of the society"⁸¹. In order to achieve these ends, it must secure conditions favourable to material well-being and this requires a role for government in the economy. Locke mentions that it is the function of government to maintain conditions favourable to stable markets so that trade can abound. Legislation on economic matters must enlarge the flow of money "into the current trade for the improvement of the general stock and wealth of the nation". Sometimes legislation on economic matters may be instituted to achieve the prosperity of the nation; it may also be required to ensure the "good and preservation of all subjects". As we have already seen, Locke recommends the state regulation of interest rates to prevent economic hardship among the poor and their exploitation by wealthy capitalists. The government must also secure the preservation of all and the prosperity of the community by securing the "increase of lands and the

right employment of them" - the latter being the "great art of government"⁸² - and the good and preservation of all by ensuring that jobs are provided for the poor.

In sum, Locke does not argue for the minimal, nightwatchman state; he does not believe, as Nozick does, that "any more extensive state" than the minimal one will "violate persons' rights". The "great art of government" for Locke is not merely protection against force, theft, fraud and enforcement of contracts. On the contrary:

The ways of attaining these (i.e. the ends of government) comprehend all the arts of peace and war; the management of trade, the employment of the poor, and all other things that belong to the administration of the publick.⁸³

Now it is clear that the fundamental Law of Nature justifies the limitation of the property and liberty of some for the preservation of others. The limitation of the property and liberty of landowners and handicraftmen in Locke's proposals for the relief of children in need is clearly justified by the fundamental Law of Nature. But the "good of the community", the "good, prosperity and safety of society", the "good and quiet of all subjects" cannot be justified on this ground. Moreover, it would appear that the good of all and the prosperity of the nation may impose more extensive regulation of property by government than that required for preservation alone, and limit self-ownership even further. For example the "right employment of lands" may require that property owners are required to use all or part of their lands in accordance with the choices of government. Similarly, government intervention in economic affairs and trade for the national prosperity may result in certain persons making smaller profits than they would otherwise make in a free-market, laissez-faire system. How does Locke justify this further regulation of property and liberty?

Locke explains:

For being now in a new state (i.e. civil society), wherein he is to enjoy many conveniences from the labour, assistance, and society of others in the same community, as well as protection from its whole strength; he is to part also with as much of his natural liberty in providing for himself, as the good, prosperity and safety of society shall require; which is not only necessary, but just; since the other members of society do the like.⁸⁴

In this passage, Locke makes it clear that the individual reaps personal

benefits from living in civil society that he would not have were he on his own, for example, on a desert island. He "enjoys many conveniences from the labour, assistance and society of others in the same community, as well as protection from its whole strength". It is these goods provided by all in concert that raise him to a new level. What a person achieves, especially the wealth he has, is not what he would have if everything depended on his own labour and skills. The individual for whom all is going well is especially prone to the belief that what he enjoys stems entirely from his own labour, effort or judgment. But this is a mistake, Locke argues. The individual who

applauds his own strength and legs that have carried him so far in such a scantling of time, and ascribes all to his own vigour, little considers how much he owes to their pains, who cleared the woods, drained the bogs, built the bridges, and made the ways passable without which he might have toiled much with little progress.⁸⁵

If this same individual were to be put back in the early stages of the state of nature, his achievements would be negligible. It is clearly this "societal aspect" of people's achievements and prosperity that Nozick's analysis neglects. Nozick never points to the gains a person gets from society for which he should make a return. The libertarian focus is on the individual, as though he were on a desert island, and is, in this respect, very different from the Lockean focus. In accordance with the above passage, Locke could argue that Nozick's medical researcher might have made a significant breakthrough (for which he deserves credit and material reward) but that his achievements were not entirely of his own making, but were furthered and made possible by the accumulated knowledge and expertise of society together with many other physical and material advantages provided by society. Regarding knowledge and inventions in particular, Locke adds that "we are favourable enough to our own faculties to conclude that of their own strength they would have attained those discoveries without foreign assistance". But we "profit by others' discoveries". A person's discovery is "not properly of his own single industry, nor of his own acquisition". These quotations show very clearly that Locke's focus is very different from Nozick's. On account of this different perspective, it is very likely that they would use different baselines in judging property rights. For Nozick, the baseline is "Where would the others be if the medical researcher had not made his invention?" I think for Locke it would probably be: "Where would the inventor be without the benefits of society?"

If an individual gains benefits from society, then it does seem reasonable that he should be called upon to make some sacrifice to maintain it and ensure its prosperity. And this is, of course, Locke's point. It would not be just if all benefit, but only some have to make a sacrifice, but it is just if all have to make the same sacrifice. Locke states that it is just that one gives up some of one's "natural liberty in providing for oneself" for the good, prosperity and safety of society because all other persons do the same. If the burdens placed on all persons who benefit be "universal and equal" this is just and there can be no grounds of complaint. But surely, it could be argued, the propertyowner makes a larger sacrifice for the benefits he receives from society than does the very poor man, for while both may have to "part with" some liberty, only the propertyowner can "part with" some property or have his property regulated. Locke makes it clear⁸⁶ that it is not only property that one holds on entering civil society that is subject to the regulation and dominion of society. Any property one "shall acquire" at a later date is limited in exactly the same way. Thus, if a poor man becomes wealthy, his wealth will also be regulated according to the "publick good".

Locke opts for a much weaker concept of self-ownership than Nozick. The stronger concept is, of course, incompatible with the fundamental Law of Nature to preserve mankind. In addition, the stronger concept seems to lose some of its impact or moral significance in a context of reciprocity - a context in which it is conceded that an individual's material prosperity, achievements and discoveries are facilitated and even partly constituted by the labour of others.

4.2 "Kantian" Inviolability and Self-Ownership: Kant and Nozick Compared

Nozick also invokes the name and prestige of Kant in support of his anti-redistributive views. The side constraints or absolute view of rights is traced by Nozick to "the underlying Kantian principle that individuals are ends, and not merely means; they may not be sacrificed or used for the achievement of other ends without their consent". Individuals are "inviolable"⁸⁷. From this fundamental moral principle, Nozick suggests, not only the positive functions of the state (protection against physical force, theft, fraud, breach of contract) but also its limitations can be derived. It prohibits "sacrificing one

person to benefit another".

This Kantian principle to which Nozick appeals in support of his position against "enforced benevolence" is, of course, the second formulation of the Categorical Imperative: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end"⁸⁸. For Kant, the Categorical Imperative is the moral foundation for both perfect and imperfect duties. Perfect duties are duties of justice, duties which correlate with rights, and which must be enforced by the state, while imperfect duties are duties of virtue which are morally good to perform but whose performance may not be enforced by the state or any one else⁸⁹. Because the Categorical Imperative or "Kantian Principle" is the moral foundation of duties of justice - duties enforceable by the state - Nozick is correct to make the connection between the powers and limitations of state activities and this Kantian Principle, that is, to argue that the powers of the state must be derived from the Kantian Principle in order to be morally legitimate. The key question is whether, for Kant, as for Nozick, all forms of "aid" or "benevolence" are imperfect duties not enforceable by the state or whether there are some kinds of "aid" or "benevolence" that are perfect duties (duties which correlate with rights) which the state may enforce. In other words, does Kant believe that it is morally good to help the poor and needy in society, or is it obligatory in the strong sense required to justify governmental coercion?

In the remainder of this section, I shall consider Kant's own application of the Kantian Principle to his social philosophy as it appears in the Metaphysical Elements of Justice and Theory and Practice. I shall show that Kant's own understanding of KP does not justify the prohibition of all "benevolent" activities by the state, that Kant, unlike Nozick, does not argue "that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others".

In MEJ, Kant argues that the government has the "right to levy taxes" for welfare. "The government is authorised to require the wealthy to provide the means of sustenance to those who are unable to provide the most necessary needs of nature for themselves", to require the wealthy "to support those members of the society who are not able to support

themselves"⁹⁰. The wealthy (whom Kant defines as those who "have sufficient for their needs and other purposes and then to spare")⁹¹ are "bound" to "contribute to the support of their fellow citizens in need"⁹². "The money", he says, "should not be raised through voluntary contributions, but by compulsory exactions as political burdens", that is, by "taxation" or "lawful assessment" made upon wealthy citizens' "property and commerce"⁹³. The state "cannot abandon anyone who has to live"⁹⁴ and, to this end, it may use its coercive apparatus to require some (wealthy) citizens to aid others (needy citizens). The duty to aid others, to provide those in need with the material means of life, is a perfect duty i.e. a duty of justice that is juridically enforceable. It is matched by a correlative right on the part of the needy to be supplied with the material means of life.

Now, it might be thought that when Kant says that the government is authorised to require the wealthy to provide the "means of sustenance" to the needy, he has in mind something very minimal like bare food rations to prevent starvation or malnutrition. This appears to be Murphy's view⁹⁵, and is certainly the view taken by Susan Meld Shell who says in a footnote: "For Kant, our right to protection by the state is a right to bare subsistence but no more than that"⁹⁶. Kant's words, "the means of sustenance" seem to suggest this, but his examples in Sections 326, 327 and 367 show that he intends much more than this, although not a fully-developed modern Welfare State. In particular, he mentions state provision for "the poor, the invalid and the sick"⁹⁷ and "abandoned children"⁹⁸ such as "homes for the poor and hospitals"⁹⁹, "foundling hospitals"¹⁰⁰ and "widows' homes, hospitals and so on"¹⁰¹. The "and so on" does not include state-financed schools for Kant has no confidence in state education. If the state authorities "provide funds" for education, "the drawing up of the (educational) scheme must be deferred to them". But "experience" shows that the financial authorities of the state "have not the universal good so much in view, as the well-being of the state, whereby they may attain their own ends"¹⁰². Thus, "the support" given "to those members of the society unable to support themselves" covers health, welfare and housing, but not education. State-financed institutions set up for these purposes "are certainly not subject to abolition"¹⁰³.

State-financed "benificent institutions" set up for the needy may co-exist with private (endowed) institutions set up for the same purpose,

but the state must make its own provision for all those whose needs are not covered by such private institutions. Kant permits the state extensive jurisdiction over these private institutions, including the right to adapt them to the needs of the time, to "choose a wiser means of support" for their beneficiaries. He suggests that, in most cases, it would be better if the poor and sick were taken out of institutions where their "freedom is extremely limited" and instead given "a grant-in-aid of a certain sum of money (proportionate to the need of the times)" so that they could "board wherever they please, with relatives or acquaintances"¹⁰⁴.

In sum, Kant does not argue, like Nozick, that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others. He does not come out in strong condemnation of social welfare, arguing that it is unjust to tax Jones in order to be benevolent to Smith, that to tax Jones in this way is to treat him as a means to the ends of Smith. On the contrary, provision of the means of health and welfare is one of the state's fundamental obligations. "The state cannot abandon anyone who has to live"¹⁰⁵; it cannot "knowingly let anyone perish"¹⁰⁶. It cannot neglect people so that they are left to beg, to receive alms; the receipt of alms, he says, "degrades men"¹⁰⁷. The needy have perfect rights to the means of health and welfare; the wealthy a duty of justice to provide these means. It is interesting to note that Kant believes that all forms of property (including commerce and business) should be subject to taxation by lawful assessment¹⁰⁸. A libertarian, like Nozick, would argue that to tax wealth arising from commerce and industry (as opposed to wealth arising from land, gifts and inheritance) is especially wrong; it amounts to seizing hours of labour and energy from the taxpayers; it makes taxpayers slaves to their beneficiaries.

For Kant, the legitimate sphere of state action follows from the essential function of the state itself which is to preserve freedom in the external relations of men. The state must aim to secure, by legislation, a stable, enduring, social order that guarantees the right of each person to "pursue his happiness in the manner that seems best to him" provided, of course, that he does not thereby infringe on anyone else's freedom according to universal law. Justice is defined by Kant as "the aggregate of those conditions under which the will of one person can be conjoined with the will of another in accordance with the

universal law of freedom"¹⁰⁹. The coercive power of the state derives its legitimacy from the necessity of using force to keep one person from using his freedom to limit the freedom of another¹¹⁰. Freedom is "the condition of every use of coercion"¹¹¹.

It is clear that Kant's welfare proposals would enable those with little or no property to exercise their right of freedom, that is, to pursue their happiness in their own way. Certain kinds of economic disadvantage inhibit the exercise of freedom of those who are disadvantaged. Those who have to concentrate (because of lack of such goods as food, clothing, shelter and medical care) on mere animal survival are not in a position to pursue their happiness in the manner that seems best to them (nor are they able to realise any of their uniquely human potentials). Thus, such welfare proposals would clearly enhance their freedom. But what about the freedom of those from whom the property or wealth was taken in order to finance these welfare benefits? A libertarian, like Nozick, would argue that such welfare proposals also contract freedom i.e. they contract the freedom of propertyholders to do as they wish with what they legitimately own.

For Kant, all morally legitimate laws of property must express the collective will of the community. This includes laws regarding disposal of property. Thus, for Kant, disposal of one's property is a public affair, expressing the collective will of the community, while, for Nozick, in contrast, it is a private affair, expressing the private (individual) will of the propertyholder. I shall first spell out the implications of this difference, and then explain the reason for it.

Public laws such as those of property and welfare which secure the rights of each person, Kant argues, should be based on the "united and consenting will of all"¹¹². Each person "has the lawful freedom to obey no law other than one to which he has given his consent"¹¹³. In TP, he explains "the touchstone of the legitimacy of all public law" as follows:

If the law is so framed that all the people could not possibly give it their consent ... the law is unjust; but if it is at all possible that a people might agree on it, then the people's duty is to look upon the law as just.¹¹⁴

Welfare legislation, to be fully justified, must always accord with the general will. If such legislation (which inevitably places restrictions and "political burdens" on wealthy citizens) did not accord with

everyone's will, its enactment would limit some persons' freedom to pursue their happiness in a way that is compatible with everyone's freedom according to universal law, and would, therefore, be unjust. If, on the other hand, such legislation does accord with everyone's will - if every citizen could consent to it, its enactment (and enforcement by the state) would be just.

To understand Kant's view of justifiable public legislation, it is important to understand what he means when he says that a public law is unjust if and only if "all the people could not possibly give it their consent". What sense of "possibility" does Kant have in mind?

In one passage, Kant implies that the answer is logical possibility.

"Just as long as it is not self-contradictory to assume that all the people consent to a law ... the law is in accord with justice"¹¹⁵. Yet this is clearly not his final judgment on the kind of possibility involved. He gives as an example of a law to which the people could not possibly give their consent one "granting the hereditary privilege of master-status to a certain class of subjects"¹¹⁶. Clearly, there is nothing self-contradictory about this law. Moreover, it would not be surprising if all the members of a feudal society (brought up to believe in the correctness of hereditary privilege) actually assented to such a law. Kant makes his meaning clearer in a later passage when he writes of the legislator's "true will". He asks whether a community "may enact a law to the effect that certain tenets of faith and outward religious forms, once adopted, should remain forever"¹¹⁷. A law setting up such an official state religion with a fixed canon of orthodoxy must be rejected, he argues - even if it accords with one's own particular religious views - because it prevents one "from making further progress in religious understanding and from correcting past mistakes". He adds that such a law "would be null and void in itself, because it runs counter to the destiny and ends of mankind"¹¹⁸. These "universal ends of mankind" or "essential ends of humanity" are described in the Metaphysics of Morals as happiness and perfection¹¹⁹.

Viewed from the inter-personal level, a law enacting such a state religion must be rejected, because it may run counter to the happiness of some persons by trying to force on them values and beliefs in which they do not share. On the level of the single individual, viewed diachronically, as a critical pursuer of his perfection and happiness over time, such a law must also be rejected. To attempt to tailor

public laws to one's particular value-conception at a certain time is to limit one's potential for developing and implementing future value-conceptions, and would be irrational. Revision of values and beliefs becomes impossible. A very similar justification can be provided for welfare provision, and against absolute property rights. On the inter-personal level, a law enforcing the absolute right to property must be rejected because it would run counter to the well-being or happiness of some persons by leaving them without the material means of life. On the level of the single individual, such absolute property rights must also be rejected. The wealthy individual who argues for absolute property rights because he has sufficient, who attempts, in other words, to tailor property laws to suit his present circumstances, is ignoring the fact that these circumstances may change over time, and that, without welfare provision, he may be left without the material means of life.

For Kant, public law is a species of universal law which is freely adopted by rational (human) beings in the light of certain essential (human) ends - notably happiness and perfection. To know whether a particular law is consistent with the general will, we must ask whether all the members of the community considered as rational beings with these essential ends could consistently assent to that law. The sense of "could" is not restricted to logical possibility. Public law ensures persons' (external) freedom, but (externally) "free behaviour" and the "use of freedom" must "conform" with "the essential ends of humanity"¹²⁰. For Kant, a person's (external) freedom is not inviolable and unlimited; it may be "restrained" and limited so that the ends of humanity are maintained and furthered¹²¹. For Locke, the Law of Nature justly limits freedom (or "licence"); for Kant, the Ends of Humanity justly do so.

We have seen that, for Kant, disposal of one's property is not a purely private affair as it is for Nozick, but is subject to the collective will of the community. This difference is clearly very significant, but what is its source?¹²²

It is clear that people may legislate collectively about something only if they "possess" it collectively, if they all have claims or titles to the good in question¹²³. And Kant does, indeed, assume that the natural

resources of the world are possessed in common. "We all have an equal right" he says, "to the good things which nature has provided"¹²⁴. In other words, Kant (like Locke, Reid and Mill) assumes "positive community". He holds that a person can have "peremptory possession" (property rights) in natural resources like land only in the sense that he is entitled to use such resources in certain ways and to be protected in his use of them by the civil law. Strictly, or in a deeper sense, natural resources are "possessed in common" with all the members of society. Thus Kant says:

Right in a thing is a right to the private use of a thing, of which I am in possession - originally or derivatively - in common with all others.^{125a}

Kant, therefore, claims that the private possession of property amounts to a private or special right to use a common possession.

If one person has "peremptory possession" of a particular good, then others are under an obligation to abstain from using that good, but this obligation to abstain can arise only "from the collective will of all united in a relation of common possession"^{125b}. But, we have already seen that this collective or general will could not assent to absolute property rights that leave some persons without the means of life or the means to pursue their happiness in their own way. In other words, and viewed from the level of the single individual (diachronically), it would not be rational to give up one's (state of nature) claims to the natural resources of the world, to abstain from using goods that one could formerly use, without an assurance that the means of life and freedom would still be guaranteed one in civil society. If property rights are to command the assent of all, then all persons must be guaranteed the means of life and freedom by the state. It is probably this idea that Kant has in mind when he says:

The general Will of the people has united itself into a society in order to maintain itself continually (i.e. according to the laws of justice) and for this purpose it has subjected itself to the internal authority of the state to support those members of the society who are not able to support themselves. Therefore, it follows from the nature of the state that the government is authorised to require the wealthy to provide the means of sustenance to those who are unable to provide the most necessary needs of nature for themselves.¹²⁶

For Kant, there is an important element of reciprocity in property rights. The state makes some persons secure in their property, but only on condition that they will allow that property to be taxed to ensure the

means of life and freedom to others. Wealthy persons, he says, receive "protection and care" of their lives and property but in return for this, "they have bound themselves to contribute to the support of their fellow-citizens in need and this is the ground for the state's right to require them to do so"¹²⁷.

In Kant's theory, perfect duties (duties of justice) correlate with rights. These duties of justice and rights are (morally) enforceable by the state. Persons have rights to the means of health and welfare. These rights (like all rights) are "inviolable"¹²⁸ and must not be transgressed. Kant notes:

He who transgresses the rights of others intends to make use of the persons of these others merely as a means, without considering that, as rational beings, they must always be esteemed at the same time as ends.¹²⁹

In Kant's view, if a needy person has a positive in rem right to the means of health and welfare, and if to violate a person's right is to treat that person as a means and not to esteem him at the same time as an end, then it is the case that to fail to provide a needy person with the means of health and welfare to which he is entitled is to treat that needy person as a means and not to esteem him at the same time as as an end.

Kant's position is, therefore, fundamentally different from Nozick's. For Nozick, of course, we treat the wealthy individual as a means when we tax away any of his wealth for the benefit of the poor and needy.

It is clearly not the case that all redistributive schemes are morally impermissible according to the "classical liberal" principles of inviolability and self-ownership, (if by classical liberal principles, Nozick means the principles of Locke and Kant.) Many modern redistributive schemes (notably those designed to enhance welfare or make possible the exercise of freedom and autonomy) do not involve a "shift" from the "classical" principle. Rather, the shift has been made by Nozick himself.

4.3 Self-ownership and Paternalism: Richard Price and Nozick Compared

Welfare in modern welfare states is effected through (1) transfer payments (transferring property from A to B) and also by (2) insurance schemes for old age and sickness. We have seen that Nozick, unlike Locke, Pufendorf, Reid, Kant and Mill, argues that transfer payments are morally unjustifiable because those to whom property is transferred become "part-owners" of those from whom property is taken. But it might be thought that although he rejects (compulsory) transfer payments, he could admit the moral legitimacy of the (compulsory) insurance principle because this does not give anyone "property rights in other people"; the insurance principle requires that A spends some of his money on A's welfare, not that A spends some of his money on B's welfare. Nozick, however, makes clear his rejection of the compulsory insurance principle. Only the

Minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts is justified; any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified ... Two noteworthy implications are that the state may not use its coercive apparatus for the purpose of getting some persons to aid others, or in order to prohibit activities to people for their own good or protection.¹³⁰

Nozick distinguishes between what Feinberg calls the "welfare principle" and the "paternal principle"¹³¹. In many theories, it is held that restriction of a person's liberty can be justified to benefit others (the welfare principle) and to benefit or prevent harm to the self (the paternal principle). Nozick argues against restriction of liberty on both of these grounds. The minimal state may not use coercion to get persons to help others or to get persons to help themselves. The minimal state does not "use or threaten force for the benefit of persons in the state"¹³². Now it is clear that compulsory insurance is paternalistic in this sense. It forces a person to do something for his own good or protection, for he must put aside part of his income or wealth for his old age or ill-health. It violates Nozickain property rights and destroys self-ownership. If a person is forced to put aside a part of his income or property even though it be for his own later use, he loses the right to dispose of all his own property as he chooses. The state instead is controlling his spending of some of his own wealth. His liberty and property rights are, thereby, compromised by the state, and his self-ownership destroyed or damaged. Such "paternalistic aggression"¹³³ by the state is morally unjustified.

It appears that once again Nozick is out of line with traditional liberal thought. In the eighteenth century, the liberal (and natural rights) philosopher, Richard Price, argued for compulsory insurance for sickness and senescence. He argued that it was the job of the state to make provision for payment of benefit in times of sickness as well as old age, and that this provision was to be financed by compulsory subscription from those who worked. In the scheme he proposed, two classes of people were exempt from compulsory subscription: those in possession of landed estate to the value of £10 p.a., but not worth more than £1,000 exclusive of such property, and certain people on low pay such as soldiers. The former were to be excluded on account of the contributions which they otherwise made to the relief of the poor (by direct aid, that is, transfer payments) and the latter on account of the meagreness of their pay which could not support an insurance contribution¹³⁴. Thus, Price's idea was that two kinds of welfare provision should co-exist; direct aid (transfer payments) for those who could not work or whose pay was too low to enable them to insure for their own welfare, and a compulsory insurance system for old age and sickness for the others.

Price held the view that the right to property is "inviolable and sacred"¹³⁵ and that to say that someone has a property right in something is to say "that it is fit that he should have the disposal of it rather than others, and wrong to deprive him of it"¹³⁶, but, despite this, the right to property that he acknowledges is much weaker than that acknowledged by Nozick. It is akin to that acknowledged by other pro-welfare liberal philosophers, and like these others, he is prepared to modify the principle of self-ownership. "We all of us have commissions from God ... to relieve distress and save that which is lost; and we should consider ourselves as sent from God for this purpose"¹³⁷. The state or civil society is the instrument we can use to discharge this responsibility. Unlike Nozick, Price believed that it is morally legitimate for the state to use its coercive apparatus to get some persons to aid others and to get persons to help themselves. It would therefore seem to be the case that Nozick in his rejection of (paternalistic) compulsory insurance is again out of line with traditional liberal theory. Modern liberal welfare philosophers who argue that it is morally legitimate for the state to make insurance for old age and sickness compulsory can point to Richard Price as their

predecessor and claim that it is Nozick, and not they, who has "shifted" from traditional liberal values and principles.

5. The Liberal Case for Redistribution and Positive in rem Rights to Aid

We have seen that Nozick mistakenly believes that he is following the "respectable" liberal tradition of Locke and Kant. But it is, nevertheless, possible that it is his conception of distributive justice that is right and that theirs is wrong. That is, while he may be mistaken in his belief that he is following Locke and Kant, he may be quite correct in his belief that justice requires absolute private property rights and historical entitlement principles. In this final section, I shall try to show that this is not the case, and that Nozick is wrong in his belief that justice requires no patterned principles and no limitations on private property rights.

Nozick concedes that ASU "does not present a precise theory of the moral basis of individual rights"¹³⁸, but he does offer some comments on the subject in a section entitled "What are Constraints Based Upon?" In that section, he attempts to identify the moral foundations of rights by considering the question of which natural human characteristics are necessary and/or sufficient for possessing rights. He argues that there must be a connection between these characteristics and the moral basis of rights.

... In virtue of precisely what characteristics of persons are there moral constraints on how they may treat each other or be treated? We also want to understand why these characteristics connect with these constraints ... It would appear that a person's characteristics, by virtue of which others are constrained in their treatment of him, must themselves be valuable characteristics. How else are we to understand why something so valuable emerges from them?¹³⁹

He considers the traditional proposals for predicates upon which rights or side constraints are based such as being sentient, self-conscious, rational, possessing free will, having a soul, but he rejects each as insufficient. Speculating that it might be unfair to treat each purported characteristic separately, Nozick asks whether, in conjunction, rationality, free will, and moral agency might not "add up to something whose significance is clear: a being able to formulate long term plans for its life, able to consider and decide upon the basis of abstract

principles or considerations it formulates to itself"¹⁴⁰ The focus is especially upon the ability to shape one's own life, to suffuse one's life with meaning and to do those things on the basis of abstract principles. In essence, Nozick believes that this makes sense of most, if not all, the traditional proposals.

A person's shaping his life in accordance with some over-all plan is his way of giving meaning to his life: only a being with a capacity to shape his life can have or strive for a meaningful life ... This notion, we should note, has the right 'feel' as something that might help to bridge an 'is-ought' gap; it appropriately seems to straddle the two.¹⁴¹

More is said by Nozick on the subject of the moral foundation of rights in Philosophical Explanations. In this work, he identifies man as a being who "searches after value" and "guides his behaviour by value considerations"¹⁴². This "value seeking" capacity is the "basic moral characteristic"¹⁴³, and it is, of course, intimately related to the other "members of the traditional list of candidates such as the ability to plan over time, to follow principles"¹⁴⁴ and to "choose freely"¹⁴⁵. Man is, in short, "a value-seeking, choice-making and meaning-seeking" being¹⁴⁶. "All people share the (capacity for) being value-seeking selves"¹⁴⁷. "They aim differently, and give different shape and texture to their lives as they express themselves as value-seeking and value-weighting selves"¹⁴⁸. The connection between the attribute of "life-shaping" mentioned in ASU and the attribute of "value-seeking" that features so prominently in PE seems to be as follows: people's value-seeking capacities find expression in their major goals and purposes, in their "overall plans". People shape their lives, make their choices, and guide their behaviour in the light of values to which they assent. In ASU, he writes of those "abstract principles or considerations" which a person "formulates to himself" and, in the light of which, he "formulates long term plans for his life" or "overall plans". These "abstract principles and considerations" (of ASU) are the "principles of value" or "value considerations" by which a "value seeking" individual "guides his behaviour" and lives his life (according to PE).

In the section entitled "Rights" in PE, Nozick suggests that the "apt response"¹⁴⁹ to a value seeking being is to permit him "a domain of autonomy"¹⁵⁰, and this "domain must include a range of important and

significant choices (such as religious practice, place of residence, choice of mate and life-style, choice of occupation) as well as a vast range of trivial choices which go to make up the daily texture of our lives"¹⁵¹. "Respecting" such a "domain of autonomy" is the "appropriate response" to a value seeking being because it enables him to exercise that capacity which most defines him.

Nozick claims that the capacity for value seeking is valuable. He further claims that beings with this characteristic have rights in virtue of which there are constraints upon the way other similar beings may treat them. What then is the function of these rights? Or, in other words, what is the rationale or reason for these rights? What is the point in ascribing them? It would seem that their rationale or function is to give individuals the moral protections and guarantees that make it possible for them to exercise their value seeking capacities in the choice of life-plans, goals, life-styles and occupations. In short, rights allow their possessors to live the lives of value seeking beings, to make the kind of choices appropriate to the natures of such beings.

The question now arises as to whether the rights that Nozick discusses in ASU really give all individuals the moral protections and guarantees requisite for such a life. Do his rights, for example, make it possible for every individual to choose, among other things, his life-style and occupation? In particular, we need to know whether his absolute private property rights are compatible with such choices for all persons.

It is clear that negative rights such as freedom of speech and information, freedom of assembly (for religious, political and other purposes), and careers open to all are necessary for the kind of value seeking life that Nozick has in mind. Moreover, it is clear that his theory ensures everyone his share of such distributable goods. But such rights do not seem to provide sufficient guarantees and moral protections for such a life. Nozick's theory, we know, does not allow transfers of property or wealth without the owner's consent. Thus, he has to hold that the individual may (has the right to) choose his life-style, occupation, place of residence etc, and, thereby, give shape, meaning and texture to his life, and utilise his value seeking capacity, even if (a) many jobs and careers are denied him because he,

or his parents, could not pay for his education and training, (b) he takes the only (low-paid) job he can get, and (c) the pay he receives from that job is insufficient to keep him and his family sufficiently fed, clad, housed, and in good health. If all persons are to be able to make significant choices and shape their lives in their own way, it is surely reasonable to argue that they must be guaranteed all the necessary material and educational conditions that make this possible.

At the beginning of this chapter, we noted that prohibitions (or constraints) while negative in character, in that they are concerned with the impermissible, can range over a positive or negative. Thus, "may not do" and "may not not-do" are equally prohibitions or constraints. In Nozick's theory of rights, as we have seen, it is the prohibition of a positive (may not-do) that has the key role - the prohibition of a negative (may not not-do) having application in respect of in personam contracts. In other words, for Nozick, "the domain of autonomy" is filled up largely with prohibitions or constraints of a positive character. But, if certain material and educational goods are to be guaranteed to people, the "domain of autonomy" should also be filled with some constraints or prohibitions of a negative kind. There would, in other words, be certain things that one could not not-do for other persons. There would still be side constraints on action, but these would be of a very different character.

The problem is that one of Nozick's side constraints or absolute rights - the absolute right to property - undermines the opportunity of those people with little or no property to shape their lives in their own way, to live a value seeking life, by giving other people (those with very large amounts of property) too great a control over their lives. The function of property rights, according to Nozick's theory, is to give people those guarantees and moral protections necessary for living the life of a value seeking being. But absolute property rights can act to undermine their own moral foundation or justification. The "natural reason" or function of the right is defeated. It seems that if a (supposed) absolute property right acts so as to give some persons so great a control over the lives of others that these others are no longer in a position to make the significant life-shaping choices that are a part of a value seeking life, then there is no such right.

Locke, of course, makes a very similar point (in respect of the means of welfare) in the Two Treatises. The key justification or moral foundation of property, for Locke, is that it enables people to be secure in the means of life. If a supposed property right acts so as to give some persons so great a control over the lives of others that these others are no longer in a position to obtain the means of life,

It would be a good argument to prove that there never was such property. (My italics) ... (For) it is more reasonable to think that God should rather himself give them all a right to make use of the food, raiment and other conveniences of life ... than to make them depend upon the will of a man for their subsistence who should have the power to destroy them when he pleased.¹⁵²

Rights to property that give some persons so much control over others that the "natural reason" for the right is defeated are simply "specious"¹⁵³. It does not, of course, follow that there are no property rights, but only that they must be limited and not absolute.

If it is true that some amount of property is necessary in order to guarantee to individuals those choices that form part of a value seeking life, and this value seeking life is considered morally significant, then everyone should (morally) have at least that minimum amount - even if it must come from someone who presently owns that property. Thus, in some circumstances, side constraints would not be absolute and one person's (say, a very wealthy individual's) property rights might be overridden by another's right to be in a position to make those significant life-shaping choices. So the claim, if true, undermines a Nozickian laissez-faire account. Exactly the same argument holds if we argue that property is necessary to guarantee liberty as Nozick argues in ASU.

The opposite argument serves Nozick's case no better. Suppose one holds that entitlements to property are not essential to liberty or a value seeking life - that the individual who has absolutely no external property, no money, has the right or is free to make significant life-shaping choices. Property is, in other words, just one of the many goods which might be important but is not essential for liberty or a value-seeking life. If property has its significance downgraded in this way, it is difficult to see why it should be protected as an unlimited right. Other goods seem to be as, if not, more important. Without food, for example, one cannot live. Hence some right to an

adequate diet would seem more important than a right to hold unlimited property. The same could be said about a right to education and a right to medical care. In other words, if there are numerous competing goods which might be important, if not crucial, for liberty or a value seeking life, then there is no reason to assume that property must be protected at the cost of these other goods. Surely food to stay alive is more important for a value seeking life or for liberty than enough money to buy a fifth Rolls Royce.

Nozick might attempt to begin with the claim that people have their bodies and their freedom and then argue that the actual owning of property (like one's body and one's freedom) is somehow essential to personhood (and autonomy). But such a suggestion also seems inadequate to generate Nozickian unlimited property rights. For, if holding property (in particular, extensive property) is essential to personhood, if it is as essential to it as life and liberty, then everyone should have property (as they should have life and liberty) to be a full person. Yet his theory does not imply that everyone should have property. Rather his theory is compatible with very few persons holding (very large amounts of) property. Entitlements to property (or money) are not guaranteed by his theory. If they were, there would be no absolute side constraints protecting already held property.

Nozick is, in short, caught in a dilemma. He tries to show (1) that property is so essential to a value seeking life, or to liberty or to personhood, that none of it may be taxed away without the owner's being used as a resource, his liberty infringed or his value seeking capacity impaired. At the same time, he tries to show (2) that he who is totally without property is still a "complete" and free person, at liberty to lead the life of a value seeking being. In other words, it seems that property is both necessary and not necessary for liberty or a value seeking life.

FOOTNOTES - NOZICK'S THEORY OF PROPERTY

1. ASU p.ix.
2. Hart, H.L.A. "Are there any Natural Rights?" in Political Philosophy (ed. Quinton, A.), pp.53-54. See also Ross, pp.55-56 who defines natural rights as those not arising out of contract.
3. ASU pp.9-10.
4. Nozick is, of course, assuming here that no contract has been made. If someone has contracted to do something for you, then he may not omit to do that thing for you. In other words, for Nozick, as for other classical liberals and libertarians, all positive rights, i.e. rights correlating with positive duties, are in personam. There are no positive in rem rights.
5. ASU p.57.
6. Ibid. p.30.
7. Ibid. p.238.
8. Ibid. p.179 footnote.
9. Hart, H.L.A. op. cit. p.56.
10. Ibid.
11. Wollheim, Richard "Equality and Equal Rights" in Olafson, F.A. (ed.) Justice and Social Policy, p.120.
12. Ibid.
13. Feinberg, Joel "The Nature and Value of Rights" in Rights, Justice and the Bounds of Liberty, p.151.
14. ASU p.30 footnote.
15. Ibid. p.28.
16. Ibid. p.29.
17. Ibid. p.32.
18. A person may not be compelled to give aid to another individual. Need cannot create a title to any part of the wealth of another. There are, of course, other grounds on which a person may morally be compelled to give up some of his property for another. If A has stolen from, or defrauded B, this injustice must be remedied. Another ground is to remedy violations of the "Lockean proviso" (see especially section 2.3).
19. ASU p.9
20. TT 1:42.
21. Considerations on Interest and Money, p.13.

22. Reid, Thomas EAP, Essay 5, Of Justice, pp.423-424.
23. TT 1:25.
24. Reid, Thomas op. cit. p.421.
25. ASU p.179 footnote.
26. Ibid. p.149.
27. Rawls, John A Theory of Justice.
28. ASU p.150.
29. Ibid. p.175.
30. Ibid. p.178.
31. Ibid. p.176.
32. Ibid. p.182.
33. Reading Nozick. Introduction p.4.
34. ASU p.180 footnote.
35. EAP p.411.
36. Ibid. p.410.
37. Ibid. p.425.
38. TT 1:42.
39. Venditio pp.84-85.
40. TT 1:41-42.
41. TT 1:42.
42. Works, Vol.4, p.296.
43. ASU p.153.
44. Ibid. pp.152-153.
45. Ibid. pp.230-231.
46. Ibid. p.152.
47. Ibid. p.156.
48. Ibid. p.153.
49. Ibid. p.154.
50. Ibid. p.154 (see also p.199).
51. Ibid. p.156.

52. Ibid. p.159.
53. Ibid. p.156.
54. Ibid. p.157.
55. Scanlon, Thomas. "Nozick on Rights, Liberty and Property" in Reading Nozick, p.109.
56. ASU p.160; also pp.163 and 167.
57. Ibid. p.161.
58. Ibid. p.163.
59. Ibid. p.167.
60. Ibid. p.169.
61. Ibid. p.169.
62. Ibid. p.33.
63. Ibid. p.33.
64. Ibid. p.31.
65. Ibid. pp.30 and 33.
66. Ibid. p.33.
67. Nozick's conception of property is like Locke's, in that it includes not merely "external" goods (land, houses, cars etc) but also "internal" goods like skills, talents, muscles, arms etc.
68. ASU p.172.
69. A Report of the Board of Trade to the Lords Justices Respecting the Relief and Employment of the Poor, Drawn up in the Year 1697 by Mr. John Locke; pp.101-126. Especially pp.112-117, notes K-P.
70. ELN Essay 7, p.187.
71. TT 2:135.
72. TT 2:12.
73. ELN pp.165 and 161.
74. Considerations on Interest and Money, p.13.
75. Locke writes in his Report to the Lords Justices:
"That if any person die for want of due relief in any parish in which he ought to be relieved, the said parish be fined according to the circumstances of the fact and the heinousness of the crime."
pp.125-126.
76. TT 2:120, 1-21.

77. TT 2:57, 24-28.
78. TT 2:163.
79. Essay on Toleration p.179.
80. TT 2:163.
81. TT 2:130.
82. TT 2:42, 22-27.
83. Works, Vol.4, p.646.
84. TT 2:130.
85. Reasonableness of Christianity in Works, Vol.3, p.91.
86. TT 2:120.
87. ASU pp.30-31.
88. Kant, I. Groundwork of the Metaphysics of Morals, p.96.
89. Kant, I. Metaphysical Elements of Justice, sections 218-220 and 240-241.
90. Ibid. section 326.
91. Kant, I. Lectures on Ethics, p.176.
92. MEJ, section 326.
93. Ibid. section 326.
94. Ibid. section 326.
95. Murphy, Jeffrey Kant: The Philosophy of Right, p.146.
96. Meld Shell, Susan The Rights of Reason, p.159.
97. MEJ, section 367.
98. Ibid. section 327.
99. Ibid. section 367.
100. Ibid. sections 326, 327.
101. Ibid. section 326.
102. Kant, I. Education, section 20.
103. MEJ, section 367.
104. Ibid. section 367.
105. Ibid. section 326.
106. Ibid. section 327.

107. Lectures on Ethics, p.236.
108. MEJ, section 326.
109. Ibid. section 230.
110. Ibid. section 231.
111. Ibid. section 340.
112. Ibid. section 314.
113. Ibid. section 314.
114. Kant, I. On the Old Saw: That May be Right in Theory but it Won't Work in Practice, p.65.
115. Ibid. p.67.
116. Ibid. p.65.
117. Ibid. p.73.
118. Ibid. p.73.
119. Kant, I. The Metaphysics of Morals. Translated by Mary Gregor, p.44. Murphy points out that the "essential ends of humanity" given in the Metaphysics of Morals are fundamentally the same as those given in the Critique of Judgment. See Murphy, Jeffrey, op. cit., p.99.
120. Lectures on Ethics, pp.122,124.
121. Ibid. pp. 17, 122.
122. For Nozick, the only powers government has in respect of persons' disposal of property relate to violation of negative rights. Government is empowered to legislate to prevent propertyowners disposing of (using) their property in ways that violate the negative rights of others e.g. by allowing poisonous fumes to escape from factory chimneys which damage the health of people in the vicinity.
123. This is Nozick's point in his discussion of Rawls' Kantian-style OP (ASU, p.199 footnote). "Do the people in the OP ever wonder whether they have the right to decide how everything is to be divided up?" The fact that "they are deciding this question" shows "they must assume they are entitled to do so" i.e. the goods in question are held in common.
124. Lectures on Ethics, p.192.
- 125a. Metaphysics of Morals, p.261.
- 125b. Ibid. p.261.
126. MEJ, section 326.
127. Ibid. section 326.

128. Lectures on Ethics, pp.193-194.
129. Groundwork, p.98.
130. ASU, p.ix, my italics.
131. Social Philosophy, p.33.
132. ASU, p.34.
133. Ibid. p.34.
134. The details of Price's proposals are given in: Thomas, D.O.
The Honest Mind: The Thought and Work of Richard Price, pp.230-233.
135. Price, Richard Appendix to A Discourse. Article XVII.
136. Price, Richard, Review, p.157.
137. Price, Richard, Sermons, p.163
138. ASU, p.XIV.
139. Ibid. p.48.
140. Ibid. p.49.
141. Ibid. p.50.
142. Nozick, Robert Philosophical Explanations, p.457.
143. Ibid. p.459.
144. Ibid. p.459.
145. Ibid. p.474.
146. Ibid. p.470.
147. Ibid. p.472.
148. Ibid. p.472.
149. Ibid. p.501.
150. Ibid. p.501.
151. Ibid. p.501.
152. TT 1:41.
153. TT 1:41.

CONCLUDING REMARKS

1. The Traditional Liberal Case for Negative Property Rights

We noted in the Introduction that negative in rem rights of non-interference in respect of property are important for traditional welfare liberal philosophers as they are for classical liberals and libertarians such as Nozick. Thus, for example, the owner of a "cottage and garden" has the right to the peaceful occupancy of his home and garden¹; an individual has a "right to his goods"² - goods for "current consumption" and for "later use" or "permanent property"³, "a right to such innocent labour as he chooses, and to the fruit of that labour"⁴, that is, to the "product of his honest industry"⁵. He has a right to gifts given to him, or to an inheritance left to him⁶, and a right to "exchange with his fellow men commodities or labour"⁷, that is, "to enter into an intercourse of innocent offices or commerce with all who incline to deal with him".

These negative rights in respect of property and labour correspond with duties of non-interference or forbearance on the part of others. Individuals must be permitted "to enjoy" the goods and the activities that lead to the acquisition of these goods⁸; no other person may "jostle and molest his neighbour" and seek to deprive him of his own⁹. The owner himself "not others" must have the power to "dispose of his property" and "transfer it"¹⁰. Thus, property rights empower individuals with, and protect them in, the capacity to use, dispose and otherwise control objects of property according to their own private purposes. Property rights acknowledge the capacity of persons to make their own decisions about what is theirs.

Negative rights, as we have seen, may be divided into active and passive rights. Active negative rights are referred to collectively as the "right to liberty" and passive negative rights as the "right to security". The key active negative rights in respect of property are the rights to engage in innocent exertions to acquire goods, to make provision for oneself and one's family, to use one's property for the benefit of oneself and one's connections, and to dispose of one's property and transfer it as one chooses. Traditional welfare liberals argue that if such active negative rights in respect of property can be

flouted by a government on any pretext or whim, one could hardly claim that a right to liberty or property existed.

The key passive negative right in respect of property is the right to be left to the peaceful "enjoyment of one's goods"¹¹ - both goods that supply one's "present wants" and those for "future wants"¹². Man is a "sagacious animal"¹³; he plans and makes provision for his future needs and, therefore, holds property for future use. This is necessary for his peace of mind, well-being and personal security¹⁴. If people are to enjoy the right to security (as they are to enjoy the right to liberty) it is clear that property rights cannot be abrogated or flouted on any insignificant pretexts. "Scarce any man can be happy", secure or retain his peace of mind, "who sees that all his enjoyments are precarious and depending on the will of others of whose kind intentions he can have no assurance".

Welfare liberal philosophers, therefore, recognise a prima facie case for enforcing (such negative) property rights. Such rights give rise to expectations about what individuals (or groups of individuals) can do with, or expect to derive from, the property they own or enjoy. To have a right to property is implicitly to have a claim that the right be reasonably secure because such a right is necessary to plan at least some kind of future actions. And planning future actions seems to be a part of one's liberty and a part of one's security¹⁵. If property rights are not reasonably secure, it makes little sense to talk about persons' having property rights at all. It would not be possible to establish a way of life, to make decisions or commitments on a long-term basis at all. There would, for example, be no point in attempting to provide oneself and one's family with the "comforts" and "advantages of life", in attempting to ensure that "one's own and one's family's wants are liberally supplied"¹⁶. Property rights have close affinities with the rights to life, personal security and liberty and they, therefore, need adequate protection.

Negative property rights acknowledge persons' capacities to make decisions about what they own, to plan and make decisions and commitments in respect of their lives. It would, therefore, seem reasonable to argue that any curtailment or abrogation of the right to control, order, dispose of, and transfer property should not be undertaken

lightly or capriciously, or on insufficient grounds. For classical liberals or libertarians such as Nozick, it would seem that no grounds are sufficient for curtailment or limitation of these rights to control, dispose of and transfer one's property (apart from the negative rights of others). Classic or negative property rights are so sacred that he is forced to wonder whether they may ever be violated even to "avert catastrophic moral horror". Now philosophers such as Price use similar language in respect of property rights, claiming that they are "sacred and inviolable"¹⁷, but, by this, they mean only that they must not be "perniciously violated", that is, violated on insufficient or arbitrary grounds. For welfare liberal philosophers, property rights empower individuals with, and protect them in, the capacity to use, dispose and otherwise control objects of property according to their private purposes but subject to certain limits upon infringing upon the positive in rem welfare rights of others, and subject also to legitimate public purposes.

What these philosophers maintain is not that property rights are so sacred that no civil laws may ever limit them at all, but, rather, that where such laws exist, they must be (a) fair and objective, and (b) stable and enduring. The burden of paying for the needs of the less fortunate members of society and for other legitimate public purposes must be shared equally among those of similar (and sufficient) wealth, and laws curtailing property rights must be public and stable, and not subject to frequent changes.

2. Welfare as a Legitimate Limitation on Negative Property Rights in Traditional Liberal Philosophy

For classical liberals and libertarians such as Nozick there can be no taxation (or other controls or abridgments upon property rights) to secure the welfare of others. There can be no state-enforced welfare, no positive in rem rights to aid; aid to the needy must always be a matter for private charity alone. Nozick (together with his critics) believes that modern liberal philosophers who argue for the welfare state with its positive in rem rights to aid have arrived at this position by sacrificing or abandoning the values, moral principles and conception of distributive justice espoused by their liberal forebears such as Locke and Kant.

In this thesis, I have tried to show that the commonly-held belief that philosophers such as Locke, Pufendorf, Reid, Kant and Mill are classical liberals who, like Nozick, reject positive in rem rights to aid is without foundation. For these philosophers, welfare is a matter of justice, not of charity; some of the property of the prosperous may be taken by the state for redistribution to the needy. All these philosophers make their positions very clear.

When modern liberal philosophers claim that provision for the needy is a matter of justice and not of charity, they are not, therefore, making a new claim. Their claim is thoroughly consistent with the foremost liberal philosophical theories that date back to the seventeenth century, and continue throughout the eighteenth and nineteenth centuries. Rather, it is Nozick's claim that is different; he has narrowed the scope of distributive justice to exclude welfare. It is he and not his welfare liberal contemporaries who has "shifted" away from the moral principles, values and rights of philosophers like Locke, Pufendorf, Reid, Kant and Mill.

3. The Consistency of the Welfare Liberal Philosophical Position

All the philosophers we have examined offer a justificatory basis or foundation for individual rights (including property rights). Rights, in other words, exist for a reason; there is some point in ascribing them. The justificatory basis or reason the liberals put forward is that rights protect and preserve something fundamentally valuable about human beings, their lives or capacities. It is held either that human beings have value, or that certain directions of human development or living are valuable and that rights protect and preserve human lives, capacities or modes of living. Rights (the whole panoply of liberal rights - freedom of speech, association, liberty and property - to name but some of the most important) protect and maintain what is of highest value.

Now among the conditions necessary for the preservation of human life, or human life of a certain sort, are material conditions. Material goods (or property) are necessary if that which is valued is to retain those features by which it is valued. All the liberal philosophers

(welfare and classical) as we have just seen in part 1 of this conclusion acknowledge the need for (negative) property rights. Such property rights are closely linked to other rights such as the rights to life, personal security and liberty.

Benn writes that:

It would be irrational, other things being equal, to regard something as axiotimon (something it is appropriate to value or esteem) but not to care whether it exists or not, flourishes or decays. To axiotima, therefore, can be ascribed needs - conditions necessary if the object is to remain that by virtue of which it is valued; for something valued as a racehorse would no longer be valued as a corpse ... Human beings no less than pictures, racehorses or trees, are axiotima ... The conditions without which they could not live or retain the features by virtue of which we perceive them as axiotima, we may call their 'basic needs'.¹⁸

For welfare liberal philosophers, the satisfaction of these basic material conditions requires positive in rem rights to welfare or aid in addition to negative in rem rights to property. Positive in rem rights to material aid or welfare are seen as essential in order that that which is valued retains those features by which it is valued. The satisfaction of these basic material conditions does not call for end-state equality. None of the welfare liberal philosophers whom we have examined are committed to equality of property - not even Mill. But the distribution of property cannot be so unequal that that which is valued is lost or damaged. I believe that it is possible to show that the welfare position is superior in that it is consistent in maintaining that material goods (property, money) are always necessary for human life itself or for a particular kind of human life which is held to be most valuable.

In Locke's theory, both reason and revelation inform us that human beings are of the highest value and must, therefore, be preserved. The preservation of mankind is the fundamental law of nature. Property rights exist essentially for the preservation of human lives. Individuals have the right and freedom to acquire and hold property in order that they and their families have the material means of life. This does not, of course, mean that they may acquire only that which is required for bare preservation; they have the right and, indeed, the duty (where possible) to acquire and retain property for the comforts and advantages of life, but this does not change Locke's point that property is first and foremost for preservation. Now Locke is clear

that some material goods are always necessary for life or preservation. Thus property (in land or capital) can never be so extensive that some persons' lives are put in jeopardy. If this becomes so, some redistribution is called for. Locke tells us that the needy man has a "right" or "title" to a part of the "surplusage" of the wealthy man. He has, moreover, a right to be "taken care of" by the civil law. He has this welfare right in order that he be preserved. If he is left in "extream want", he may either not survive at all, or survive in a way that is not recognisably human, and an object of the highest value will be lost. Locke's view is that all require some property (goods) to be preserved. And in his account, both property rights and welfare rights have the same ground or justificatory basis - they preserve and protect human lives. The case Reid presents is very similar, and, for him too, welfare is a matter of justice.

For Kant also (but for different reasons), human beings have "absolute value" or "intrinsic worth". Through their possession of rational nature, they are "objective" or "self-existent ends"¹⁹. They are the "ultimate end of creation here on Earth"²⁰; the "ultimate end of nature"²¹. They are the "ultimate end of creation here on Earth, because they are the only beings upon it that are able to form a conception of ends, and form an aggregate of things purposefully fashioned to constitute by the aid of their reason, a system of ends"²². Now Kant makes it clear how important he considers the exercise of external freedom to be for beings endowed with these capacities. External freedom is of the "highest" value in that it "gives unlimited usefulness to all other faculties"; moreover, it "serves as the foundation of all perfections and is their necessary condition"²³. It "enables" a person "to live as a man"²⁴.

In Kant's theory, it also seems to be the case that the same end - the exercise of external freedom - justifies both property and welfare rights. The legitimate sphere of state action follows from the essential function of the state itself which is to preserve and guarantee freedom in the external relations of men. Justice and law are limited to the question of whether the exercise of free choice on the part of one is consistent with the freedom of another. The aim of justice and law is to ensure that each citizen's pursuit of his ends, whatever they may be, leaves every other person free to pursue

his own ends. Now, in the pursuit of his ends, a citizen may acquire and hold property; he may acquire and hold property to satisfy his material needs and pursue his ends generally in accordance with his external freedom (the free use of his will). This property right which is an acquired right, Kant tells us, derives immediately from the innate right to (external) freedom. However, it is clear that the satisfaction of basic material needs is a pre-requisite for survival and for the pursuit of one's ends; that is, the satisfaction of basic needs is a pre-requisite for the exercise of one's external freedom. Now for reasons we have already seen, it cannot be willed as a universal law that only some have the material means of life, or that only some are able to pursue their ends, and hence that only some are able to exercise their innate right to freedom. Thus, "the government is authorised to require the wealthy to provide the means of sustenance to those who are unable to provide the most necessary needs of nature for themselves". In this way, persons are not at risk from dying through want of the necessities of life, or prevented through want of such goods from exercising their freedom to pursue their ends. Moreover, by such provision, the state treats less fortunate persons as "ends in themselves", in accordance with their "absolute value" or "intrinsic worth". The exercise of external freedom is the justification for both property and welfare rights. The raison d'etre of a legitimate state is to guarantee each citizen's freedom to pursue his own ends. In order that this is so, it must allow citizens to acquire and hold property for the satisfaction of needs and other ends, but it must also guarantee citizens' basic goods without which neither life nor freedom to pursue any ends is possible. In this way, the provision of welfare "follows from the nature of the state".

In the theories of Locke and Kant (but for different reasons), human beings are held to be of the highest value. In Mill's theory, it is held that certain directions of human development and living have special significance or value, and that certain qualities or capacities are human excellences. What is special about human beings, for Mill, is their ability to lay out their own mode of existence, to be individuals or choosers. Nearly all persons are capable of choosing or laying out their mode of existence, but it is not possible for the majority of people in a society where there are great concentrations

of wealth. In such cases, some are left without the material means of life and it is clear that a person cannot choose or lay out his mode of existence if he has no property at all - not even sufficient to purchase the basic necessities of life. The government may, therefore, institute taxation, redistribute property (such as land) and provide public services such as hospitals. It may play an active role in the promotion of the "great benefit society" in which all are able to be individuals or choosers. In taxing the wealthy (redistributing wealth to provide money and services for the less fortunate members of society), the government is not making it impossible for those from whom some property was taken to lay out their mode of existence, to be choosers, for Mill makes it clear that great wealth is not required for such a life. If all persons are to be able to lay out their mode of existence, their basic needs must be met and additionally they must have some property to control either individually (a small piece of land) or in cooperation with others (in partnerships and co-operatives). The kind of life and development which Mill values most highly clearly requires a control of property by individuals that exceeds what is needed for the preservation of life, or the exercise of external freedom. It is requisite that property be widely diffused or distributed. Mill makes it clear that in choosing, in being an individual, one may acquire, hold and dispose of property. But, as it is not possible to be a chooser or an individual without some property, redistribution and aid are justified. Thus, the rights to property and welfare share the same foundation or justificatory basis. Moreover, Mill, like Kant, Locke and Reid consistently argues that all persons must have some material goods or property if they are to retain those features by which we value them. Material goods are always necessary for life or for certain modes of living. Principles of distributive justice and property rights must be such as to reflect this fact.

For Nozick, too, human beings are axiotima. That which is of special or great significance about human beings is their capacity to live meaningful lives or to seek value. They can organise or plan their lives and make choices according to a set of values to which they assent. It is this special feature or characteristic of human beings which rights (including property rights) protect and preserve. Thus, this is the ground or justificatory basis of Nozick's strong property rights. Why does this valuable human characteristic which justifies

property rights not also justify rights to welfare? Why, in other words are the "conditions" or "basic needs" of this axiotimon a matter of voluntary charity and not of right? Does Nozick lose sight of his axiotimon so that property rights acquire a momentum of their own, or is he indifferent as to whether his "axiotimon exists or not, flourishes or decays"? I think it is clear that Nozick does not lose sight of his axiotimon, nor is he indifferent to its existence. Rather, he believes that welfare rights themselves serve to destroy what is of greatest value. "A value-seeking individual" must be permitted "to weight values in free choice" for the "basic moral characteristic of being a value seeking individual includes weighting values in free choice"²⁴. If the state 'compels aid', forces a wealthy individual to give up even the smallest part of his property to those in 'dire' need, it thereby prevents his making free choices in respect of all his property for he may no longer decide how he will use and dispose of all his property. He will no longer be in full control of all his property; the disposal and use of his property will not reflect his "weighting of values" but the state's weighting of values instead. But a problem remains for Nozick, as we have already seen. If this "weighting of values in free choice" must extend to property, then there is good reason to argue that all persons must have some property in order that all can make these 'free choices' which are so important to a value-seeking individual. All must have at least some property to control. Equally, if this "weighting of values" does not or need not extend to property, there is no reason to have such strong property rights as Nozick proposes. Nozick seems to be committed to a very odd position; a position that holds that property is necessary for a value-seeking life for those that have some, but not necessary for a value-seeking life for those that do not have some. In short, it seems that it is both necessary and not necessary for such a life. Nozick, therefore, gets into a position of inconsistency. In contrast, the welfare liberals' position is consistent; they maintain that property is always necessary for life, or for a life of a certain sort. And because property is necessary for life or for a certain sort of life, all persons must have some, and redistribution is justified to ensure this.

Now, the welfare position that property is always needed for life or for a life of a certain sort is surely correct. A person cannot

preserve his life, exercise his freedom in accordance with the essential ends of mankind, or choose his own mode of life if he lacks even the material means to purchase food, clothes, shelter and medicine. Likewise if an individual is to "regulate and guide his life in accordance with some overall conception which he chooses", if he is to make those choices characteristic of a value-seeking being, it is clear that, at the least, his basic needs must be met, and if this is so, there must be redistribution to secure such a minimal level of well-being (appropriate to the standards of the society) for those without the means to do so for themselves. The degree of control of property or material goods requisite for a value-seeking life is a matter of debate. There seems good reason to believe that a person could best seek value or realise the life of a value-seeking being in a Mill-type system of co-operatives, partnerships, and peasant proprietorships, but, at the very least, it seems that his basic needs must be met. Nozick does not show adequately why there must be such strong property rights, why there must be no redistribution for welfare at even this lowest level. In short, his claim that "the state may not use its coercive apparatus for the purpose of getting some citizens to aid others" must be rejected.

FOOTNOTES - CONCLUSION

1. Locke, John TT 2:202.
2. Reid, Thomas EAP, p.416.
3. Ibid. p.421.
4. Ibid. p.421.
5. Locke, John TT 1:42; also Mill, John Stuart. Chapters on Socialism, pp.713-714.
6. Locke, John TT 1:42.
7. Reid, Thomas EAP, p.421.
8. Ibid. p.216.
9. Ibid. p.420.
10. Price, Richard Review, p.157 and p.162.
11. Reid, Thomas EAP, p.216.
12. Ibid. p.421.
13. Ibid. p.421.
14. Locke, John ELN, p.207 and Reid, Thomas EAP, pp.421-422.
15. Reid, Thomas EAP, pp.421-422.
16. Ibid. p.422; also Locke, John TT 1:89.
17. Price, Richard Appendix to A Discourse. Article XVII.
18. Benn, Stanley Human Rights - For Whom and For What? pp.68-69.
19. Kant, Immanuel Groundwork, p.105.
20. Kant, Immanuel Critique of Judgment, pp.426-427.
21. Ibid. pp.429-430.
22. Ibid. pp.426-427.
23. Kant, Immanuel Lectures on Ethics, p.121.
24. Ibid. p.120.
25. Nozick, Robert Philosophical Explanations, pp.500-501.

ABBREVIATIONS USED IN THE DISSERTATION

ASU	<u>Anarchy, State and Utopia</u>	(Robert Nozick)
CIM	<u>(Considerations on Interest and Money)</u> <u>Some Considerations on the Consequences</u> <u>of Lowering the Interest and Raising</u> <u>the Value of Money</u>	(John Locke)
D & D	<u>Dissertations and Discussions</u>	(J.S. Mill)
DJN	<u>De Jure Naturae</u>	(Samuel Pufendorf)
DLN	<u>De Legibus Naturae</u>	(Richard Cumberland)
EAP	<u>Essays on the Active Powers of the</u> <u>Human Mind.</u>	(Thomas Reid)
EHU	<u>Enquiry Concerning Human Understanding</u>	(David Hume)
ELN	<u>Essays on the Law of Nature</u>	(John Locke)
EPM	<u>Enquiry Concerning the Principles</u> <u>of Morals</u>	(David Hume)
MEJ	<u>Metaphysical Elements of Justice</u>	(Immanuel Kant)
PPE	<u>The Principles of Political Economy</u>	(J.S. Mill)
T	<u>A Treatise of Human Nature</u>	(David Hume)
TP	<u>(Theory and Practice)</u> <u>On the Old Saw: That May be Right in</u> <u>Theory but it Won't Work in Practice</u>	(Immanuel Kant)
TT	<u>Two Treatises of Government</u>	(John Locke)
WORKS	<u>The Works of John Locke</u>	(John Locke)

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